

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WISCONSIN

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EDGEWOOD HIGH SCHOOL OF THE
SACRED HEART, INC.,

Plaintiff,

Case No. 3:21-cv-0018-wmc

CITY OF MADISON, WISCONSIN,
et al,

Defendants.

DEPOSITION OF

GEORGE HANK

April 27, 2022
Madison, Wisconsin

Reported by: Cheri Winter, CSR

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1DEPOSITION OF GEORGE HANK, called as a

2witness, taken at the instance of the Plaintiff,

3pursuant to Notice, before Cheri Winter, Certified

4Shorthand Reporter, and a notary public in and for the

5State of Wisconsin, at the law offices of Godfrey &

6Kahn, S.C., One East Main Street, Suite 500, Madison,

7Wisconsin, on the 27th day of April, 2022, commencing at

88:59 a.m.

9

10APPEARANCES:

11For the Plaintiff:

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Also Present: Matthew Tucker

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1WEDNESDAY, APRIL 27, 2022, 8:59 A.M.

2--o0o--

3GEORGE HANK,

4having been first duly sworn, was examined and

5testified as follows:

6--o0o--

7EXAMINATION

8BY MR. INGRISANO:

9Q. Good morning, Mr. Hank. Can you please state

10your name and spell it for the record.

11A. George Hank. My last name, H-a-n-k.

12Q. And what is your date of birth, sir?

13A. [REDACTED]

14Q. And what's your current residential address?

15A. 2118 East Mifflin Street, Madison 53704.

16Q. And how are you employed?

17A. I'm retired now.

18Q. When was your date of retirement?

19A. The last day in the office was approximately

20July 16th of last year. I was on the clock until late

21September.

22Q. When you say "on the clock," what do you mean

23by that?

24A. I was burning vacation.

25Q. Mr. Hank, have you ever been deposed before?

<p style="text-align: right;">Page 6</p> <p>1 A. I was thinking about that. No.</p> <p>2 Q. Let me just lay out a couple of ground rules</p> <p>3 that we can try to adhere to today, you and I, to make</p> <p>4 sure this goes as smoothly as possible and we get a</p> <p>5 nice, clean record of your testimony.</p> <p>6 The court reporter off to your right is</p> <p>7 reporting everything that we say on her stenograph</p> <p>8 machine, so she can only record verbal answers. So to</p> <p>9 the extent that you can remember to give a verbal answer</p> <p>10 to a question that I pose to you, she'll be able to</p> <p>11 record that; okay?</p> <p>12 A. Yep.</p> <p>13 Q. So nods of the head, shakes of the head,</p> <p>14 "uh-uhs" or "huh-uhs," are very difficult her to</p> <p>15 transcribe; okay?</p> <p>16 A. Sure.</p> <p>17 Q. At the same time, it's also very difficult for</p> <p>18 her to transcribe two people talking at the same time,</p> <p>19 so to the extent you can let me finish my question</p> <p>20 before you begin your answer, I will try to do the same</p> <p>21 thing and wait for your answer to be complete until I</p> <p>22 pose my next question; okay?</p> <p>23 A. Sure.</p> <p>24 Q. There may come a time in which your attorney</p> <p>25 decides to pose on objection to a question that I pose.</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. And what year did you graduate?</p> <p>2 A. 1975.</p> <p>3 Q. And you played athletics at Edgewood High</p> <p>4 School?</p> <p>5 A. Yes, I did.</p> <p>6 Q. What sports did you play?</p> <p>7 A. Track and football.</p> <p>8 Q. And any other extracurriculars that you</p> <p>9 participated in at Edgewood?</p> <p>10 A. Athletic-wise, no.</p> <p>11 Q. How about any other extracurriculars besides</p> <p>12 athletics?</p> <p>13 A. I participated in Edgefest, you know, doing</p> <p>14 things like that.</p> <p>15 Q. What was Edgefest?</p> <p>16 A. It was an annual event that they held trying</p> <p>17 to raise money. They had -- you know, it kind of was</p> <p>18 like a festival, carnival-type thing. They also had</p> <p>19 shows in the gym, the Edgewood Follies, things of that</p> <p>20 nature.</p> <p>21 And I was just -- if you're at Edgewood, you</p> <p>22 participated and helped out at events.</p> <p>23 Q. Sure. So I'm an Edgewood '92 grad. So when I</p> <p>24 was there, we had Edgefest. And had the -- the flea</p> <p>25 market was held kind of in front of the school.</p>
<p style="text-align: right;">Page 7</p> <p>1 You know, I don't pretend I always ask perfect</p> <p>2 questions. So to the extent that she's going to do</p> <p>3 that, if you can pause and stop your answer, let her</p> <p>4 complete her objection, and then once she instructs you</p> <p>5 not to answer, if you can do your best to try to answer</p> <p>6 my question that would be great; okay?</p> <p>7 A. Okay.</p> <p>8 Q. All right. This is not a marathon, so to the</p> <p>9 extent you need to take a break, use the restroom, get</p> <p>10 something to drink, confer with your counsel, just ask</p> <p>11 for a break and we'll do our best to accommodate you as</p> <p>12 soon as we can; okay?</p> <p>13 A. Sure.</p> <p>14 Q. If you don't understand a question that I've</p> <p>15 asked, just like your attorney might object to a</p> <p>16 question, you might not understand a question I've</p> <p>17 asked, if you can just ask me to clarify and I will do</p> <p>18 my best to do that; okay?</p> <p>19 A. Sure.</p> <p>20 Q. If you give an answer to a question, I tend to</p> <p>21 think that you understood it; all right?</p> <p>22 A. I understand.</p> <p>23 Q. Okay. Can I ask you, sir, where did you go to</p> <p>24 high school?</p> <p>25 A. I went to Edgewood High School.</p>	<p style="text-align: right;">Page 9</p> <p>1 Is that consistent with your recollection?</p> <p>2 A. I don't really remember a flea market. I</p> <p>3 remember a beer garden, but, yeah.</p> <p>4 Q. And then the Midway carnival ride, et cetera,</p> <p>5 was done on the football field for a period of time. Do</p> <p>6 you recall that?</p> <p>7 A. I do recall that.</p> <p>8 Q. And Edgefest was run, to your knowledge --</p> <p>9 well, let me ask you this:</p> <p>10 To your knowledge, how long did Edgewood run</p> <p>11 Edgefest?</p> <p>12 A. I believe it started when I was in high school</p> <p>13 which was started in 1970. I'm not sure how long it</p> <p>14 went.</p> <p>15 Q. They are not currently doing Edgefest, though;</p> <p>16 correct?</p> <p>17 A. Not that I'm aware of.</p> <p>18 Q. And do you recall the Edgewood athletic field</p> <p>19 being used as part of Edgefest during those years that</p> <p>20 you remember Edgefest being run?</p> <p>21 A. Yes, I do.</p> <p>22 Q. With respect to your participation in football</p> <p>23 at Edgewood, did you utilize, as a football player, the</p> <p>24 athletic field at Edgewood High School?</p> <p>25 A. Yes, I did.</p>

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1 Q. For what purposes?

2 A. Practices.

3 Q. Did you ever play any games on that field?

4 A. No, I did not.

5 Q. Were you ever -- at any time since you've been

6 at Edgewood, as a student to the present day, are you

7 aware of football games being played on that field?

8 A. From when I was there, 1970 moving forward, I

9 am not aware of any games that were played there.

10 Q. You never attended any football games at the

11 Edgewood field?

12 A. No, I did not.

13 Q. Have you ever heard of or seen any games being

14 played -- any games, football or otherwise, being played

15 on the Edgewood athletic field?

16 MS. ZYLSTRA: Object to form. You can answer.

17 A. Not as an attendee. I drove by and saw people

18 on the field and they looked like they were organized.

19 That was after the turf was down.

20 Q. And when was that?

21 A. 3-4 years ago.

22 Q. With respect to track, in your time at

23 Edgewood, did you utilize the Edgewood field for track?

24 A. For conditioning. I was a weight man, so I

25 was doing shot put and discus. And we did that some

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1 other place so we weren't injuring people. But

2 certainly they made us run.

3 Q. Sure. But that, again, was for practice. Is

4 that what you're saying?

5 A. Yes.

6 Q. But any track meets held at Edgewood during

7 your tenure there as a student?

8 A. No.

9 Q. Since your graduation from Edgewood were you

10 ever aware of, or observe, any track meets being held on

11 the Edgewood track?

12 A. I am aware of athletic competition that was

13 happening there. I don't remember if it was soccer or

14 track in the spring where we went to observe. Not me,

15 personally, but one of my staff did.

16 Q. That was in 2019; correct?

17 A. I believe so, yes.

18 Q. Between your graduation and 2019, were you

19 aware of any track meets being held on the Edgewood --

20 A. No.

21 Q. Other than your experience and knowledge of

22 football practices, track practices, and Edgefest event,

23 are you aware of any other use of the Edgewood field

24 besides those from your experience there and from what

25 you've learned in the years since?

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1 MS. ZYLSTRA: Object to form. You can answer.

2 A. Certainly, when I was there it was used for

3 Phy Ed.

4 Q. Anything else?

5 A. Not that I'm aware of or remember.

6 Q. Have you ever heard of the Edgewood field

7 being used for Monroe Street farmer's market or a

8 farmer's market of any kind?

9 A. No.

10 Q. After graduating from Edgewood in '75, what

11 did you do?

12 A. I went to college. After -- I went to

13 college, let's go there.

14 Q. And where did you go and what was your degree

15 in?

16 A. I started out at Stevens Point in forestry.

17 After a year I came back to Madison, spent a year

18 pursuing electrical engineering and decided I was not a

19 good fit. And after that, I got a degree in

20 construction administration.

21 Q. What year did you complete that degree?

22 A. I think it was December of '80.

23 Q. Where were you employed -- how have you been

24 employed since your college graduation?

25 A. Mainly, I was self-employed doing construction

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1 work. Built decks, garages, remodeling, built a home.

2 And then I worked for All Channel Electronics for a year

3 installing and maintaining alarm systems, fire alarm

4 systems.

5 I did that for approximately a year and became

6 aware of an opening in the City and applied.

7 Q. What opening was that?

8 A. It was a housing inspector.

9 Q. And that's with the City of Madison's Building

10 Inspection Department?

11 A. That is correct.

12 Q. When did you start in that position, about

13 what year?

14 A. When I retired last year, it was just shy of

15 35 years.

16 Q. So you spent 35 years in the City's building

17 inspection department; is that correct?

18 A. That is correct.

19 Q. And you became the head of that building

20 inspection department at some point in time; correct?

21 A. Yes, I did.

22 Q. When did that occur?

23 A. I was a director for 16 years.

24 Q. For 16 years?

25 A. 16.

<p style="text-align: right;">Page 14</p> <p>1 Q. So the period of 2013 through 2020, you would 2 have been the director of the building inspection 3 department for that entire period of time; correct? 4 A. That is correct. 5 MS. ZYLSTRA: Counsel, I believe you meant 6 2021. 7 MR. INGRISANO: Yeah, I was asking about 2013 8 through 2020, specifically, but -- 9 MS. ZYLSTRA: I apologize. 10 Q. MR. INGRISANO: When you retired in 2021, you 11 were at that point still the director; correct? 12 A. That is correct. 13 MS. ZYLSTRA: I apologize, Counsel. 14 MR. INGRISANO: No, you're quite all right. 15 Q. MR. INGRISANO: Really quick, are you married, 16 sir? 17 A. Yes, I am. 18 Q. Do you have any children? 19 A. Yes, I do. 20 Q. What high schools do they attend? 21 A. They attend East High School. It's very 22 convenient. We live five doors away, six doors away. 23 Q. Understood. Since your graduation from 24 Edgewood High School have you been on the athletic field 25 at Edgewood High School?</p>	<p style="text-align: right;">Page 16</p> <p>1 when they are told to do things. 2 And then there is weights and measures. For 3 those of you who do not know what that is, they ensure 4 measuring devices are accurate. So when you go to a gas 5 station and buy five gallons of gas you are actually 6 getting five gallons of gas or a pound of hamburger, or 7 they actually check dryers to make sure that when you 8 put a quarter in that's supposed to run for 20 minutes, 9 or whatever it is, it actually runs for 20 minutes. 10 So they do a lot of different things. Taxi 11 meters, making sure they are accurate. 12 And finally, there is the zoning section. 13 Zoning basically tells you what you can and cannot do 14 with your property. Permitted uses. So they are 15 involved with the development review. 16 If somebody brings forward plans or wants to 17 build a building, they make sure that it complies with 18 the zoning code. 19 Q. So that zoning section is run by or headed up 20 by a zoning administrator; is that correct? 21 A. That is correct. 22 Q. And is that -- during the period of time from 23 2013 through 2021 who was the zoning administrator? 24 A. Matt Tucker. 25 Q. Mr. Tucker is here today?</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Since graduation, I probably walked around 2 there during Edgefest but nothing other -- nothing comes 3 to mind. 4 Q. Sure. Sir, what were your responsibilities as 5 Madison's director of the building inspection 6 department? 7 A. Building inspection consists of five sections. 8 There is the new construction section, which is, I 9 think, fairly obvious. 10 Somebody wants to build a new build or alter 11 an existing one, we review plans, issue permits, and 12 then inspect the building, the electrical, plumbing, and 13 heating to make sure it complies with all state codes. 14 And then there is the minimum housing and 15 property maintenance. I'm going to lump those together. 16 They are still considered separate, but we treat them as 17 one. They are staff that inspect existing buildings and 18 properties for compliance with the minimum housing code. 19 They tell people to replace the roof when 20 shingles are falling off, paint the building, rebuild 21 chimneys. The property maintenance people will direct 22 people to cut their grass in the summer, shovel their 23 sidewalk in the winter, pick up trash, graffiti. 24 Q. So the really fun part of the job, right? 25 A. Oh, yeah, get a lot of complaints from people</p>	<p style="text-align: right;">Page 17</p> <p>1 A. Yes, he is. 2 Q. And so Mr. Tucker -- is it fair to say, based 3 on your recitation, that Mr. Tucker, being the head of 4 one of those five areas you talked about, reported to 5 you during that period of time? 6 A. That is correct. 7 Q. With respect to -- I think I'm focusing here 8 on the zoning part of your job, but if I'm not, if I 9 shouldn't be, let me know. 10 But as part of your job as the director of the 11 building inspection department you were responsible for 12 interpretation of the building code; is that correct? 13 A. Yes. 14 MS. ZYLSTRA: Object to form. You can answer. 15 THE WITNESS: Yes. 16 Q. MR. INGRISANO: And that included, too, the 17 interpretation of municipal code chapters on electrical 18 permits; is that correct? 19 A. That is correct. 20 Q. In looking at the Madison municipal code, the 21 chapter on electrical requirements is Chapter 10; is 22 that right? 23 A. That's really not the electrical. I think 19 24 is. 25 Q. Okay.</p>

<p style="text-align: right;">Page 18</p> <p>1 A. I believe you're referring to 10 point -- or 2 10.085, which is outdoor lighting. 3 Q. Outdoor lighting. Okay. 4 To your knowledge, that is the Madison code 5 provision that governs outdoor electrical -- outdoor 6 lighting? 7 A. Outdoor lighting, yes. 8 Q. So the issuance of electrical permits under 9 that Section 10.085, that falls under your department's 10 purview; is that right? 11 MS. ZYLSTRA: Object to form. You can answer. 12 A. Really not issuing a permit under 10.085. 13 It's under Chapter 19 in the NEC. That is just -- we 14 want to ensure that it meets the light standards that 15 are prescribed in 10.085. 16 But the electrical permit itself is 17 guaranteeing that it's installed properly, the wire is 18 sized properly, right burial depths. Those are all 19 governed in the NEC, National Electrical Code. 20 Q. Got it. 21 A. The 10.085 is ensuring that the lights meet 22 standards for trespass, glare, things like that. 23 Q. So 10.085 sets forth the criteria for outdoor 24 lighting along the lines of what you just said for glare 25 and proper -- other kind of objective criteria, light</p>	<p style="text-align: right;">Page 20</p> <p>1 they do the work "will this be okay," but as a licensed 2 professional the person installing the wire, we find, 3 generally knows what they are doing and the proper size 4 wiring is installed, proper circuits, all that. 5 So they inspect and approve, when it's 6 correct, but there is no review of the actual lighting 7 circuits. 8 Q. Got it. So the review that you're describing 9 -- and, again, I'm trying to understand. 10 The review that you're describing is one of 11 making sure that the proposed lighting and the as-built 12 lighting meets the technical requirements that you're 13 looking for under 10.085; is that right? 14 A. That is correct. 15 (Exhibit 1 marked) 16 Q. MR. INGRISANO: Mr. Hank, I'm handing you 17 what's been marked as Exhibit No. 1. 18 Do you recognize that, sir, as the 10.085 19 outdoor lighting Madison ordinance we have been talking 20 about? 21 A. Yes, I do. 22 Q. And, again, I don't know as much about this 23 area as you do, but can you confirm for me that 10.085 24 is not a conditional use analysis; is that right? 25 MS. ZYLSTRA: Object to form, foundation.</p>
<p style="text-align: right;">Page 19</p> <p>1 spill, things like that? 2 MS. ZYLSTRA: Object to form. You can answer. 3 A. Yes. 4 Q. But the assessment -- an application comes 5 into the building inspection department for a permit to 6 install outdoor lights in, let's just say, 2018; okay? 7 That permit is going to be reviewed under the 8 standards of 10.085, the application is going to be 9 reviewed under the standards of 10.085; correct? 10 A. That is correct. 11 Q. What other code sections will that application 12 be reviewed under? 13 A. Reviewed under? None. 14 Q. Any other code sections in the Madison 15 ordinances material to whether that light permit is 16 going to issue? 17 MS. ZYLSTRA: Object to form. You can answer. 18 A. There are -- I guess there are no -- there is 19 no plan review for electrical standards that I'm aware 20 of anywhere in the state of Wisconsin. 21 So basically most -- oh, most electrical is 22 feed by number of openings, number of circuits, size of 23 service. But there isn't anybody that reviews that. 24 The inspectors ensure that it's installed 25 correctly. Of course, they can ask the inspector before</p>	<p style="text-align: right;">Page 21</p> <p>1 THE WITNESS: So -- 2 MS. ZYLSTRA: I'm sorry, you should answer. I 3 apologize. 4 A. Can you ask the question again? 5 Q. Sure. Are you familiar with the concept of a 6 conditional use permit? 7 A. Vaguely, yes. 8 Q. What's your understanding, sir, of a 9 conditional use permit? 10 A. People apply to do things that maybe are not 11 strictly allowed under the zoning code, and they would 12 maybe go to -- they would go to the Plan Commission 13 where it would be reviewed and would be maybe approved 14 with conditions that they have to -- you know, that if 15 it was an outdoor seating event, you know, for a 16 restaurant that they had to close, let's say, at 9:00 17 o'clock because it's close to a residential area and 18 they did not want to disturb the neighbors, they may 19 grant approval but have conditions on it. 20 Q. And 10.085, as you said before, sets forth the 21 technical specifications that you're looking for in 22 reviewing outdoor lighting permits; correct? 23 A. That's correct. 24 Q. So your department is empowered -- if those 25 technical specifications are met, you're empowered to</p>

<p style="text-align: right;">Page 22</p> <p>1 issue that permit; is that correct?</p> <p>2 A. Well, it is approved, and we're typically the</p> <p>3 final signoff.</p> <p>4 So if somebody else has approved the permit</p> <p>5 and then we are -- as long as all the conditions are</p> <p>6 met, then we would give a final signoff on it.</p> <p>7 Q. Can you give me an example of the kinds of</p> <p>8 conditions you're talking about that would have to be</p> <p>9 met?</p> <p>10 A. Again, I'll go back to an outdoor restaurant.</p> <p>11 They would maybe say that -- they would say how many</p> <p>12 tables are approved, that they are going have to provide</p> <p>13 outdoor trash receptacles.</p> <p>14 One of the standards that's typically in there</p> <p>15 is that all exterior lighting must meet 10.085, all</p> <p>16 right, so they would then -- that would be part of the</p> <p>17 review that would happen, because somebody -- you know,</p> <p>18 they wouldn't want to install lighting that would not be</p> <p>19 compliant. So we would review it to make sure that it</p> <p>20 would meet the standards.</p> <p>21 And then once everything is installed and</p> <p>22 approved then we would do the final signoff on the</p> <p>23 conditional use.</p> <p>24 Q. I'm not asking about conditional use at this</p> <p>25 point. I'm asking for just someone comes into your</p>	<p style="text-align: right;">Page 24</p> <p>1 surface to make sure that when it gets to the property</p> <p>2 line there is no trespass onto adjoining properties.</p> <p>3 And that's -- if everything is -- if the</p> <p>4 fixtures are full cutoff fixtures, there is not a whole</p> <p>5 lot more involved with it.</p> <p>6 You know, I'll add that if somebody tried to</p> <p>7 do it without full cutoff fixtures it gets more</p> <p>8 complicated, because then you have to take into account</p> <p>9 glare.</p> <p>10 When the ordinance was written, they basically</p> <p>11 gave a pass to glare if it was a full cutoff fixture,</p> <p>12 which is very helpful when you put a pole very high up</p> <p>13 in the air. Because if you're on the ground looking up,</p> <p>14 you can see the bulb and that would create glare. But</p> <p>15 if it's a full cutoff fixture, glare is not an issue by</p> <p>16 the ordinance.</p> <p>17 Q. So when that application I talked to you</p> <p>18 about, the hypothetical 2018 application comes in, I</p> <p>19 bring it to your office. Who reviews that?</p> <p>20 A. At the time -- do you want the person's name?</p> <p>21 Q. Yeah, please.</p> <p>22 A. At the time, Steve Rewey did the majority of</p> <p>23 them. He's a building inspector. And I think we were</p> <p>24 training somebody else at the time to also do them.</p> <p>25 Q. So Steve Rewey is going to be looking at those</p>
<p style="text-align: right;">Page 23</p> <p>1 office with an application for an existing use, an</p> <p>2 existing facility, additional, you know, existing space,</p> <p>3 and they say, hey, we want -- in 2018, we want to add</p> <p>4 outdoor lighting to that.</p> <p>5 That's a permit application that's directed to</p> <p>6 your office; is that correct?</p> <p>7 A. That is correct.</p> <p>8 Q. And your department in 2018 is authorized to</p> <p>9 review that application for electrical outdoor lighting</p> <p>10 and signoff and approve that permit application;</p> <p>11 correct?</p> <p>12 A. To approve the lighting standards, yes.</p> <p>13 Q. Yes. Okay. What else could cause -- what</p> <p>14 else has to be done -- I guess, let's do this this way:</p> <p>15 In 2018, I come to you. I've got a field in</p> <p>16 the city of Madison and I want to add outdoor lights to</p> <p>17 it. I come in with my outdoor lighting application.</p> <p>18 Describe for me the process. I come in and I</p> <p>19 put that on your desk. Describe for me the process for</p> <p>20 reviewing that outdoor lighting application?</p> <p>21 MS. ZYLSTRA: Object to form. You can answer.</p> <p>22 A. The reviewer will take the submitted plans.</p> <p>23 They will look to see what type of fixtures are being</p> <p>24 provided, the height of them. They also look at</p> <p>25 computer-generated light readings that would be on the</p>	<p style="text-align: right;">Page 25</p> <p>1 things you talked about, the fixtures, the height, the</p> <p>2 computer-generated light readings for trespassing and</p> <p>3 spillover; correct?</p> <p>4 A. That's correct.</p> <p>5 Q. In assessing those things, he's looking really</p> <p>6 at the four corners of the Exhibit 1, right, the 10.085</p> <p>7 outdoor lighting ordinance, right?</p> <p>8 MS. ZYLSTRA: Objection to form. You can</p> <p>9 answer.</p> <p>10 A. Yeah, he's looking to make sure it meets those</p> <p>11 standards, sure.</p> <p>12 Q. Is there any other ordinance that Steve would</p> <p>13 be looking, at that time, to see if that standard has</p> <p>14 been met and the permit can issue?</p> <p>15 MS. ZYLSTRA: Object to form. You can answer.</p> <p>16 A. Steve would not be reviewing that, no.</p> <p>17 Q. Let's just say Steve looks at that 2018</p> <p>18 application and signs off. It's compliant with the</p> <p>19 technical requirements of 10.085.</p> <p>20 What happens next to my light application?</p> <p>21 A. It sits there waiting to be issued.</p> <p>22 Q. What is it waiting on?</p> <p>23 MS. ZYLSTRA: Object to form. You can answer.</p> <p>24 A. To see -- if it was part of a broader</p> <p>25 development review, generally it's going to be to make</p>

<p style="text-align: right;">Page 26</p> <p>1 sure that that broader development is in compliance. 2 Because we wouldn't want somebody to install lights and 3 find out that, oh, you can't do that. 4 But that's not the review -- Steve would not 5 be doing that type of review. 6 Q. Who does that review? 7 A. Typically, zoning. 8 Q. So at some point in time in the process of my 9 light application we talked about here in 2018, some 10 point in time zoning is brought in and apprised there is 11 an outdoor lighting application? 12 A. For significant ones, yes. 13 Q. How would zoning know that there is a light 14 application that needs its review? 15 A. Usually a part of a broader review. You know, 16 somebody is installing -- altering their parking lot or 17 altering the -- what is perceived to be the altering or 18 changing the use of an area, and you'd want to make sure 19 that that use is approved by the zoning code. 20 Q. Who apprises zoning that there is an 21 application that requires that broader review? 22 Steve gets done with his checklist, he signs 23 off on it. How does zoning find out that there is 24 something that requires enhanced review? 25 A. Commercial lighting, outdoor lighting, is</p>	<p style="text-align: right;">Page 28</p> <p>1 if we could not use them." 2 Q. So then you're going to look at -- so where in 3 the code do you look at to see that a proposed use of 4 outdoor lighting can prevent the issuance of a permit 5 for outdoor lighting? 6 A. I'm not going to look at no code. I don't 7 know zoning that well. I'm going to ask either one of 8 the zoning staff or the zoning administrator. 9 Q. So in that situation you would defer to your 10 zoning administrator whether or not that electrical 11 permit, that's otherwise analyzed under 10.085, can 12 issue? 13 A. Yes, I'll elaborate just little bit. When I 14 was the director, I was responsible for enforcing a 15 stack of codes about that tall. There is no way I could 16 know everything that was going on in any of those codes 17 or all of those codes. 18 So -- but I also thought I could read codes 19 and interpret codes, so I would go to the people that 20 would be the expert in those and ask "is this a problem, 21 show me where," and then we would discuss it. 22 Q. We've talked about -- my hypothetical talked 23 about 2018. 24 Is this the same process you outlined that was 25 in place prior to the adoption of the</p>
<p style="text-align: right;">Page 27</p> <p>1 typically entered into the -- our case tracking, our 2 review process. So there might be -- it might only -- 3 when it's brought in, somebody from zoning will look at 4 it and decide which agencies need to look at based on 5 what's being done. 6 So if they were -- again, if it was a parking 7 lot and they were altering stuff, it may involve traffic 8 engineering, it could involve engineering. And then, of 9 course, then the final review part of that would be 10 zoning to make sure that what they are proposing to do 11 is approved under the zoning code. 12 Q. So if a lighting application is otherwise 13 technically compliant with 10.085, are you saying that a 14 different zoning violation unrelated to the technical 15 specifications for lights could prevent that light 16 permit from issuing? 17 MS. ZYLSTRA: Object to form. You can answer. 18 A. We would want to make sure that the proposed 19 -- what they were proposing to do with it was permit it. 20 Because if we give somebody a permit to do something and 21 then they go ahead and install that stuff and then we 22 come back later after they have invested a lot of money 23 and say "there is a problem, you can't use those the way 24 you want to use them," you know, the question is, "well, 25 why did you allow us to install them in the first place</p>	<p style="text-align: right;">Page 29</p> <p>1 Campus-Institutional District zoning code? 2 A. I would say yes. 3 Q. So the Campus-Institutional District code was 4 amended in October of 2019. Are you familiar with that? 5 A. I'm going to say no. 6 Q. To your knowledge, the review of outdoor 7 lighting permits, applications, using 10.085, to your 8 knowledge, was the same for properties zoned 9 Campus-Institutional as well as properties that were 10 zoned otherwise; is that right? 11 A. The review of 10.085, yes. 12 Q. If the review of outdoor lighting for 13 Campus-Institutional districts changed in 2019, you're 14 not aware of the details of how that change occurred or 15 what those changes were? 16 A. No. 17 (Exhibit 2 marked) 18 Q. MR. INGRISANO: Sir, I've handed you what's 19 been marked as Exhibit 2. Can you identify that 20 document for me? 21 A. Well, it consists of several documents. One 22 is the electrical permit. This one is to Madison 23 Metropolitan School District to install new lighting for 24 football and baseball fields, repair/alterations. 25 So it was an existing, and I believe they were</p>

<p style="text-align: right;">Page 30</p> <p>1 re-fixturing it. And it was at -- it appears to be 2 Memorial High School. 3 Q. So page 3 of this exhibit is the City of 4 Madison Site Plan Verification page. Do you see that? 5 A. Yes. 6 Q. And it's a little hard with the photocopying, 7 but the status of the three different reviews that are 8 listed there it does say "Approved"; correct? Can you 9 see that? Turn the page a little bit. 10 A. Yes. 11 Q. And lighting review was done here by Steve 12 Rewey; correct? 13 A. That's correct. 14 Q. Did you have any involvement, to your 15 recollection, in the review or approval of a lighting 16 review for this permit? 17 A. None. 18 Q. Were you aware that this permit was filed when 19 it was? 20 A. No. 21 Q. Now, you mentioned before that zoning can 22 review these applications. Is that reflected by the 23 third line of the review by Christina Thiele? 24 A. Yes. 25 Q. And, again, do you know what it is that she</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. So you weren't involved with the amendment to 2 Madison ordinances that created the Campus-Institutional 3 zoning districts in 2013; is that right? 4 A. Not at all. 5 Q. So you have no knowledge about that process? 6 A. Literally none at all. 7 Q. You have no knowledge about the rationale or 8 the public policies behind creating that 9 Campus-Institutional District? 10 A. After the effect, I believe the idea was -- 11 no, actually, I'm sorry, I was thinking of something 12 different. So no, I am not. 13 Q. Who in your department at the time in 2013, 14 2012, 2011 would have been the most knowledgeable person 15 about the creation of the Campus-Institutional zone 16 district? 17 MS. ZYLSTRA: Object to form, foundation. You 18 can answer. 19 A. From my department, it would have been Matt 20 Tucker, Jenny Kirchgatter, the assistant zoning 21 administrator, and any changes like this are also 22 involved people from the planning staff. 23 Q. And planning is not -- is planning under your 24 purview or not? 25 A. No.</p>
<p style="text-align: right;">Page 31</p> <p>1 would have been reviewing in the approval of this from a 2 zoning review standpoint? 3 A. My understanding, probably very little, 4 because it was an existing lit field. 5 Q. Here Madison Memorial High School is zoned 6 Campus-Institutional; is that correct? 7 A. I do not know. 8 Q. From this Exhibit 2, though, it would be your 9 expectation that the lighting review would be done under 10 10.085; is that right? 11 A. That is correct. 12 Q. Do you know what would be looked at from a 13 zoning review standpoint? 14 A. Basically, that they haven't changed -- that 15 what they are doing here is not changing the use of the 16 areas. 17 Q. To your knowledge are uses in the 18 Campus-Institutional District allowed at nighttime or 19 are they limited in any way to daytime, to daytime 20 hours, daylight hours? 21 MS. ZYLSTRA: Object. Foundation. You can 22 answer. 23 A. I'm -- I've -- I know very little about 24 Campus-Institutional zoning. I had never heard of that, 25 to be honest with you, until this issue came up.</p>	<p style="text-align: right;">Page 33</p> <p>1 (Exhibit 3 marked) 2 Q. MR. INGRISANO: Mr. Hank, I'm handing you 3 what's been marked as Exhibit No. 3. Do you recognize 4 what this document is? 5 A. Yes, it's a city site plan review. 6 Q. It's labeled, "City of Madison Site Plan 7 Verification"; correct? 8 A. That's correct. 9 Q. It's two pages. And this is a document that 10 you are familiar with that's generated by your 11 department; is that right? 12 A. That is correct. 13 Q. Again, this relates to a lighting application 14 for Edgewood High School; correct? 15 A. That is correct. 16 Q. And Steve Rewey, again, reviewed and approved 17 from your department? 18 A. Yes, he did. 19 Q. And according to this document, Exhibit 3, 20 Christina Thiele approved under zoning review; is that 21 right? 22 MS. ZYLSTRA: Objection to form. You can 23 answer. 24 A. Yes. 25 Q. To your knowledge, Madison Edgewood is zoned</p>

<p style="text-align: right;">Page 34</p> <p>1 Campus-Institutional; is that correct?</p> <p>2 A. I'm trying to remember. I believe it is now.</p> <p>3 Q. So, again, with Exhibit 3, in Steve Rewey's</p> <p>4 approval under the lighting review, his review would</p> <p>5 have been based upon the technical standards set forth</p> <p>6 in 10.085; correct?</p> <p>7 A. That is correct.</p> <p>8 Q. And you don't know, specifically, what</p> <p>9 Christina Thiele would have reviewed, if anything, when</p> <p>10 she approved the zoning review; correct?</p> <p>11 A. Specifically, no.</p> <p>12 Q. Generally?</p> <p>13 A. Well, generally, if there is any question, she</p> <p>14 would ask for input from Matt or Jenny, the zoning</p> <p>15 administrator and the assistant zoning administrator, to</p> <p>16 you know, is there something I'm missing here.</p> <p>17 (Exhibit 4 marked)</p> <p>18 Q. MR. INGRISANO: Sir, I've handed you what's</p> <p>19 been marked as Exhibit 4. Have you seen this document</p> <p>20 before?</p> <p>21 A. I've seen one that's a lot thicker. So I</p> <p>22 think this might have been part of the large stack of</p> <p>23 stuff that I received.</p> <p>24 Q. Sure. So we posed interrogatory questions of</p> <p>25 the defendants in this case.</p>	<p style="text-align: right;">Page 36</p> <p>1 outdoor lighting applications in 2019 and 2020."</p> <p>2 Do you see that?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Sorry?</p> <p>5 A. Yes, sorry.</p> <p>6 Q. You have been doing great so far with verbal</p> <p>7 answers, but it's an easy pattern to fall back into. So</p> <p>8 I'm not trying to be rude to remind you to give verbal</p> <p>9 answers.</p> <p>10 A. No, I appreciate it.</p> <p>11 Q. The response to Interrogatory No. 6, you kind</p> <p>12 of cut through the objections, and beginning with</p> <p>13 language, "Subject to and without waiving these</p> <p>14 objections, the individuals who generally process the</p> <p>15 applications were Matthew Tucker, Chrissy Thiele, Steve</p> <p>16 Rewey, and George Hank. In addition, John Strange may</p> <p>17 have had some non-privileged communications regarding</p> <p>18 the applications."</p> <p>19 Did I read that correctly?</p> <p>20 A. Yes.</p> <p>21 Q. To your knowledge, are you -- do you know who</p> <p>22 processed and reviewed Edgewood's lighting applications</p> <p>23 in 2019?</p> <p>24 A. Well, the lighting plan would have been done</p> <p>25 by Steve Rewey.</p>
<p style="text-align: right;">Page 35</p> <p>1 Did you review and -- hold on. I see page 9</p> <p>2 of the document. That's certification signed by Matthew</p> <p>3 Tucker. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And that was dated December 9 of 2021. Do you</p> <p>6 see that?</p> <p>7 A. It looks like December -- oh, yes, I'm sorry.</p> <p>8 Q. Prior to December 9 of 2021, did you review</p> <p>9 any -- did you review these answers to interrogatories</p> <p>10 to confirm that they were true and accurate?</p> <p>11 MS. ZYLSTRA: I want to object somewhat based</p> <p>12 on attorney-client privilege. Let me think about that.</p> <p>13 Can you repeat the question?</p> <p>14 MR. INGRISANO: Can you read that back,</p> <p>15 please.</p> <p>16 (Record read)</p> <p>17 MS. ZYLSTRA: Very limited question, Mr. Hank.</p> <p>18 You're not to disclose your communications with your</p> <p>19 counsel with respect to discovery, but I'll allow you to</p> <p>20 answer that question.</p> <p>21 A. The date of it? I'm not -- I don't think so.</p> <p>22 Q. Let me ask you to take a look, sir, at page 6</p> <p>23 of Exhibit 4. Interrogatory No. 6.</p> <p>24 "Identify all City of Madison officials or</p> <p>25 employees who reviewed or were consulted by Edgewood's</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. Are you aware of anyone else who was consulted</p> <p>2 or reviewed -- consulted with or reviewed those lighting</p> <p>3 applications in 2019 and 2020?</p> <p>4 A. I looked at them very briefly with Mr. Rewey.</p> <p>5 A concern was raised that they had -- that their</p> <p>6 submittal included punt lighting, and technically punt</p> <p>7 lighting would not be allowed under the lighting</p> <p>8 ordinance because it is shining up into the sky.</p> <p>9 Q. When was the issue with punt lighting raised?</p> <p>10 A. I can't give you a really good answer.</p> <p>11 Q. But looking back at Exhibit 3, Steve Rewey</p> <p>12 nevertheless approved the lighting review; correct?</p> <p>13 A. I believe it was -- it was post approval, and</p> <p>14 our reviews are typically stamped conditionally</p> <p>15 approved, because if we approve something that was --</p> <p>16 say we approved a structural member and made a gross</p> <p>17 error in it, we couldn't allow somebody to build it that</p> <p>18 way, you know, in case -- we wouldn't want it to</p> <p>19 collapse or, you know, injure somebody.</p> <p>20 So while, yes, we approved it, we are going to</p> <p>21 make you are fix it and do it correctly.</p> <p>22 Q. Sir, Exhibit 3 identifies lighting review as</p> <p>23 having been approved and zoning review as having been</p> <p>24 approved. No permit for lighting to Edgewood High</p> <p>25 School for outdoor lights for its football field was</p>

<p style="text-align: right;">Page 38</p> <p>1 actually issued; correct?</p> <p>2 MS. ZYLSTRA: Objection. Foundation. If you</p> <p>3 know.</p> <p>4 A. I'm not aware of a permit being issued.</p> <p>5 Q. Has anyone made you aware of the reasons why a</p> <p>6 permit was not issued?</p> <p>7 A. It is my understanding it was because the</p> <p>8 purpose to install the lighting was for athletic</p> <p>9 competitions at night, and I believe it was the</p> <p>10 interpretation that that was not permitted under either</p> <p>11 their master plan at the time or they did not get the</p> <p>12 proper approvals from the Plan Commission later.</p> <p>13 Q. Do outdoor lighting permit applications</p> <p>14 identify the details of the proposed use of the</p> <p>15 lighting?</p> <p>16 MS. ZYLSTRA: Object to form. You can answer.</p> <p>17 A. Sometimes it's self-explanatory.</p> <p>18 Q. Who told you that the reason why the permits</p> <p>19 didn't issue was because of the uses that Edgewood was</p> <p>20 proposing?</p> <p>21 A. I believe they were discussions with Matt</p> <p>22 Tucker and with our attorney.</p> <p>23 Q. John Strange?</p> <p>24 A. Yes.</p> <p>25 Q. And when did those discussions occur?</p>	<p style="text-align: right;">Page 40</p> <p>1 mean by that?</p> <p>2 A. Pull the building permit for other projects.</p> <p>3 I'm speaking in broad terms.</p> <p>4 Q. Sure. But take away those kind of</p> <p>5 extraordinary circumstance, kind of what I call marginal</p> <p>6 scenarios.</p> <p>7 Typical practice, assuming no odd</p> <p>8 circumstances, what would you typically expect to see a</p> <p>9 permit issued?</p> <p>10 MS. ZYLSTRA: Object to form. You can answer.</p> <p>11 Also lacks foundation.</p> <p>12 A. It could be as quickly as days and it could be</p> <p>13 months longer. It varies greatly.</p> <p>14 Q. If you look at Exhibit 2, sir, page 3 of</p> <p>15 Exhibit 2, with the Madison Memorial permit.</p> <p>16 A. Uh-huh.</p> <p>17 Q. Zoning review was completed July 31; Urban</p> <p>18 Design Commission review, August 6. That's the last</p> <p>19 date of approved review.</p> <p>20 And that permit on the first page is dated</p> <p>21 August 13; is that correct?</p> <p>22 A. I haven't looked at it in a long time.</p> <p>23 Q. Permit date.</p> <p>24 A. Yes, on August 13, 2018.</p> <p>25 Q. So in that circumstance there, from August 6</p>
<p style="text-align: right;">Page 39</p> <p>1 A. I'm sorry, I -- once I left there, dates</p> <p>2 somewhat became meaningless.</p> <p>3 Q. Understood. So the zoning review -- if you</p> <p>4 look at Exhibit 3, the zoning review approval was</p> <p>5 stamped March 1, 2019. Do you see that?</p> <p>6 A. I'm trying to -- which one are we --</p> <p>7 Q. On Exhibit 3.</p> <p>8 A. What date did you say?</p> <p>9 Q. March 1, 2019.</p> <p>10 A. Oh yes, I'm sorry.</p> <p>11 Q. So based on that, the timing of those reviews</p> <p>12 and approvals, in your experience, typically, how soon</p> <p>13 would a permit issue on an otherwise approved</p> <p>14 application during your tenure as a director?</p> <p>15 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>16 A. It varied -- it varies greatly. Sometimes we</p> <p>17 will have applicants that will look to start work prior</p> <p>18 to this process being completed. They would ask for an</p> <p>19 early start. It doesn't apply here.</p> <p>20 But I have always been amazed at sometimes</p> <p>21 people want the permit before the approval process is</p> <p>22 completed and they really want to get started, and other</p> <p>23 times it's all approved and it's ready to go and they</p> <p>24 wait months to pull the permit. So it varies greatly.</p> <p>25 Q. When you say "pull the permit," what do you</p>	<p style="text-align: right;">Page 41</p> <p>1 of the last review approval to August 13 was the</p> <p>2 issuance of that permit; correct?</p> <p>3 A. That is correct.</p> <p>4 Q. And given what you know about this permit in</p> <p>5 Exhibit 2, that would be a reasonable period of time for</p> <p>6 issuance; correct?</p> <p>7 MS. ZYLSTRA: Object to form. You can answer.</p> <p>8 A. Yes.</p> <p>9 Q. With respect to the Edgewood permit, have you</p> <p>10 seen a copy of that application, sir, from February of</p> <p>11 2019?</p> <p>12 A. The complete application, I would say no. I</p> <p>13 looked at -- again, I think I mentioned I looked at some</p> <p>14 specific pages with Steve Rewey when we checked about</p> <p>15 punt lighting.</p> <p>16 Oh, I find that -- it's my interpretation that</p> <p>17 -- that our lighting ordinance has not caught up with</p> <p>18 some of the best practices and it probably should just</p> <p>19 include punt lighting with maybe some standards that it</p> <p>20 has to shut off within a certain time after completion</p> <p>21 of the use of the field or whatever.</p> <p>22 Q. So the lighting permit at issue in Exhibit 3,</p> <p>23 did that not issue because of the punt lighting issue or</p> <p>24 because of the questions about proposed uses?</p> <p>25 MS. ZYLSTRA: Object to form.</p>

<p style="text-align: right;">Page 42</p> <p>1 Q. If you know.</p> <p>2 A. I would -- I would say that it's my</p> <p>3 recollection that it was because of the uses.</p> <p>4 Q. When a permit is not issued by your department</p> <p>5 is a denial letter typically sent?</p> <p>6 MS. ZYLSTRA: Objection. Foundation. If you</p> <p>7 know, go ahead and answer.</p> <p>8 A. Yes.</p> <p>9 Q. Have you ever seen a denial letter sent with</p> <p>10 respect to the Edgewood lighting application at Exhibit</p> <p>11 3?</p> <p>12 A. Not that I recall.</p> <p>13 Q. And a denial letter will typically set forth</p> <p>14 the reasons for the denial and give a party the</p> <p>15 opportunity to address the issues; correct?</p> <p>16 MS. ZYLSTRA: Object to form, foundation. You</p> <p>17 can answer.</p> <p>18 A. Yes.</p> <p>19 Q. From your discussions with Mr. Strange and</p> <p>20 Mr. Tucker, what were the proposed uses of the lighting</p> <p>21 that was causing this permit not to issue?</p> <p>22 MS. ZYLSTRA: I'm going to object on</p> <p>23 attorney-client privilege and instruct you not to</p> <p>24 answer.</p> <p>25 You're asking about communications with City</p>	<p style="text-align: right;">Page 44</p> <p>1 reasons -- strike that.</p> <p>2 Have you had any conversations with Mr. Tucker</p> <p>3 when Mr. Strange was not present or anyone else from the</p> <p>4 attorney's office where the proposed uses of the</p> <p>5 lighting were discussed as the reason for non-issuance</p> <p>6 of a permit? Or to simplify it --</p> <p>7 A. Yeah, yeah.</p> <p>8 Q. Sorry, go ahead.</p> <p>9 A. I'd say I had multiple conversations with</p> <p>10 Mr. Tucker about many things.</p> <p>11 Can I confer with counsel?</p> <p>12 Q. Not while a question is pending, sir, I'm</p> <p>13 sorry.</p> <p>14 MS. ZYLSTRA: Only if it involves an</p> <p>15 attorney-client privilege. If it involves an</p> <p>16 attorney-client privilege you can confer with me outside</p> <p>17 the room. If it does not involve a privileged</p> <p>18 communication -- right now his question was only --</p> <p>19 MR. INGRISANO: Mr. Tucker.</p> <p>20 MS. ZYLSTRA: -- did you have any</p> <p>21 communications with Mr. Tucker, and I believe you</p> <p>22 answered yes. I believe.</p> <p>23 Q. MR. INGRISANO: And I asked the follow-up</p> <p>24 question, what were those discussions?</p> <p>25 A. It was the City's -- it's my remembrance it</p>
<p style="text-align: right;">Page 43</p> <p>1 Attorney John Strange and Mr. Tucker.</p> <p>2 If you are able to answer his question without</p> <p>3 -- separately from any discussions involving Attorney</p> <p>4 Strange, you can answer the question, but if it involves</p> <p>5 your discussions with Attorney Strange, I'll instruct</p> <p>6 you not to answer.</p> <p>7 Do you want to hear that question again,</p> <p>8 Mr. Hank?</p> <p>9 THE WITNESS: Please.</p> <p>10 MS. ZYLSTRA: Or do you want it rephrased?</p> <p>11 MR. INGRISANO: Counsel, are you taking the</p> <p>12 position that his communications in 2019 regarding the</p> <p>13 denial or non-issuance of this permit, that his</p> <p>14 conversations with John Strange are privileged as of</p> <p>15 that time period?</p> <p>16 MS. ZYLSTRA: Yes. I mean, I do believe that</p> <p>17 there is some -- to the extent that there are</p> <p>18 non-privileged communications with John Strange, I</p> <p>19 certainly think that those are open for review.</p> <p>20 To the extent they involved solely Mr. Hank</p> <p>21 and Mr. Tucker and Mr. Strange and those communications</p> <p>22 were not revealed in any way, shape, or form than any</p> <p>23 others, then I think they are attorney-client.</p> <p>24 Q. Have you ever had any discussions with</p> <p>25 Mr. Tucker where counsel was not present about the</p>	<p style="text-align: right;">Page 45</p> <p>1 was the City's contention or our interpretation at that</p> <p>2 time that athletic competitions could not be held there,</p> <p>3 and allowing large capital investments to install</p> <p>4 lighting, I think put us at risk of "well, you allowed</p> <p>5 us to install that, why did you do that?"</p> <p>6 An analogy, we had somebody who was building a</p> <p>7 house, a very large house, and it was -- we found it was</p> <p>8 way too close to the property line, and we stopped them</p> <p>9 immediately when we became aware of it because we waited</p> <p>10 for them to be completely done and it ended up in the</p> <p>11 courts.</p> <p>12 They may say "well, you became aware of it way</p> <p>13 back when, why did you not stop them until it was</p> <p>14 resolved?"</p> <p>15 Q. The interpretation that athletic competitions</p> <p>16 cannot be held on the property, on the field, what was</p> <p>17 that interpretation of?</p> <p>18 A. Depending on the time, it was the master plan</p> <p>19 and -- and then later when the zoning changed to, I</p> <p>20 think, the Campus-Institutional, I believe. I'm not a</p> <p>21 zoning expert. But that would require them to get a</p> <p>22 conditional use permit to alter what they were doing.</p> <p>23 MS. ZYLSTRA: Counsel, whenever you get to a</p> <p>24 good stopping point, if we could take a restroom break.</p> <p>25 MR. INGRISANO: Yeah, one more thing.</p>

<p style="text-align: right;">Page 46</p> <p>1 MS. ZYLSTRA: Feel free to stop whenever you 2 want. 3 Q. Beyond Mr. Tucker -- well, let me ask you 4 this: 5 Mr. Tucker is the one who identified the 6 master plan as the source for this idea that uses for 7 the property did not include athletic competitions; is 8 that fair? 9 MS. ZYLSTRA: Object to form. You can answer. 10 A. I believe he is the one that brought it to my 11 attention. 12 Q. Did he tell you what his analysis included in 13 that regard? 14 A. I believe reviewing the document. 15 Q. Did he confer with or consult with anyone else 16 that he disclosed to you? 17 A. I would -- I do not have a definite knowledge 18 one way or another. 19 Q. Did you review the Edgewood Master Plan as 20 part of your discussions and analysis of withholding 21 this permit? 22 A. I'm trying to remember if it was this permit 23 or another one, but reviewed certain pages of the 24 document. Certainly, I did not sit there and read the 25 whole document.</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. And that's what I'm trying to figure out is 2 how this gets from his review to being here on this form 3 on this website. 4 To your knowledge, the reviewer is the one who 5 is actually going in and manually updating and creating 6 this form; is that right? 7 A. Generally, I'm going to say yes, that is true. 8 When you ask Mr. Tucker, he might have a better answer 9 on it. 10 We deal with people, city staff, that aren't 11 really familiar with this. There are -- they are 12 familiar with the reviews and the standards but not the 13 intricacies of this actual program. 14 An example, the person that does reviews for 15 demolition and what is happening with the materials, 16 typically, at least when I left, he would call and talk 17 to one of the zoning staff and/or he would send an email 18 to one of the zoning staff and they would enter it with 19 notes saying "email from Brian Johnson, approved," you 20 know, "okay to approve recycling plan," and that would 21 be in the system. 22 So I believe Steve enters his own, but if I 23 found out later that he is sending an email to somebody 24 saying "lighting plan is good, please approve me," it 25 would not surprise me.</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. Do you recall what pages you reviewed? 2 A. They referred to what was allowed under -- for 3 uses for open spaces, I believe, and the field was 4 considered one of them. 5 Q. Besides the open spaces page of the master 6 plan, of Edgewood's master plan, was there any other 7 section or reference that you're aware of that was 8 relied upon? 9 A. Not that I'm aware of. 10 MR. INGRISANO: We can take a break. 11 MS. ZYLSTRA: Great. Thank you. 12 (Recess) 13 BY MR. INGRISANO: 14 Q. Back on the record. Looking back at Exhibit 15 3. You've got that in front of you? 16 A. Uh-huh. 17 Q. Where it says "Lighting Review - Approved. 18 Steve Rewey." Do you see that? 19 A. Yes. 20 Q. Who enters in, in your office, the approved 21 status designation on this form? 22 MS. ZYLSTRA: Objection. Foundation. Go 23 ahead and answer. 24 Q. If you know. 25 A. I believe Steve enters his own.</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. So does that same answer hold true, then, 2 where it has the status as closed and the contents of 3 the description on that same document, you believe it 4 would be Steve that would be entering in that field? 5 A. Are you referring to the lighting review 6 approved, Steve Rewey, February 27th, 2019? 7 Q. Exhibit 3 above the review where it says 8 "Description: Lighting Edgewood activity field" and 9 "Status: Closed." 10 Do you believe that Steve Rewey or someone 11 else would typically be responsible for entering in that 12 data? 13 A. That would be done by somebody from zoning if 14 it's not auto-generated. 15 Q. In your career as director at the building 16 inspection department, how many times did you bring in 17 the city attorney to discuss a lighting application -- 18 MS. ZYLSTRA: Objection -- 19 Q. -- an outdoor lighting application. 20 MS. ZYLSTRA: Objection. Form, foundation. 21 You can answer. 22 A. None that I can recall. 23 Q. Does Steve Rewey, when he's reviewing a 24 lighting application under 10.085 and its requirements, 25 does he have any sort of discretion in whether it meets</p>

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1 the applicable standard?

2 MS. ZYLSTRA: Object to form. You can answer.

3 A. I would say no.

4 Q. Beyond what's in 10.085, are there any kind of

5 unwritten rules or guidance that your department has

6 when doing the lighting review?

7 A. I'll speak in a broader term. Reviewers never

8 approve something unless it meets the code. If they are

9 going to -- if they are going to -- say, somebody is

10 going to submit a wall section and say they are going to

11 insulate it to R-19 and it requires R-21, we are not

12 about to say, yeah, that's close enough, go ahead, you

13 know, submit something that's accurate.

14 Another great example is somebody submitted

15 something once where they wanted us to approve a

16 handicap counter and they showed it being an inch too

17 high and we said no.

18 Q. So 10.085, a reviewer like Steve Rewey, in

19 doing the lighting review, cannot vary from the

20 requirements and the specifications in 10.085; is that

21 right?

22 A. That is correct.

23 Q. Close enough is not good enough, right?

24 A. Yeah, the phrase "close enough" for government

25 work does not apply.

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1 Q. Got it.

2 A. Either it meets it or it doesn't.

3 Q. You had mentioned before that zoning is

4 brought into review an application for lighting if it's

5 significant enough to warrant their involvement.

6 Who makes the determination that a lighting

7 application involves significant issues?

8 MS. ZYLSTRA: Objection. Form. You can

9 answer.

10 A. As it comes in, zoning is typically going to

11 look at any outdoor lighting that comes in, because if

12 they're going to look at it -- if it's brought in,

13 they're going to go "is something changing here," and if

14 all of a sudden they are going to -- if they are

15 installing new lighting, and, let's say, they are going

16 to light an outdoor area, paved area, at a parking lot,

17 the question will be "why are you doing this?"

18 And then we may than find out that it's for an

19 outdoor seating area, and they're going to say, well,

20 you're not approved for an outdoor seating area, you

21 should start that process now so that you can find out

22 whether or not you can do it.

23 Q. So zoning basically has discretion as to

24 whether they are going to investigate further and see if

25 there aren't additional circumstances that require a

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1 closer review; is that correct?

2 A. It kind of -- the word "discretion," they are

3 looking at it. If it's a like Memorial, they are not

4 substantially changing the lighting; they are putting up

5 new fixtures, maybe new poles.

6 But if it's really not substantially changing

7 that, they would -- their review would be very -- the

8 review would be basically "I looked at it, it's the

9 same."

10 Q. But you just used the words "substantially

11 changing," so the words "substantially changing"

12 involves some sort of assessment by the zoning

13 department as to what is substantial and what's not

14 substantial; is that right?

15 A. I guess that is correct.

16 Q. In 2019, sometime after March 1 here as

17 demonstrated on Exhibit 3, did John Strange recommend to

18 you that you withhold the permit from your department?

19 MS. ZYLSTRA: I'm going to object on the basis

20 of attorney-client privilege. If the recommendation was

21 if Mr. Strange made that recommendation and there were

22 discussions that included others beyond the city staff,

23 then you can answer that question.

24 If the communications -- if there were

25 communications -- and I'm not saying there were -- about

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1 withholding the permit between you and John Strange

2 alone, I'm going to say that's privileged and you

3 shouldn't answer the question.

4 MR. INGRISANO: Counsel, there are a lot of

5 John Strange documents that have been produced in this

6 case. There are a lot of memos and recommendations, a

7 lot of communications even between John Strange and

8 outside legal counsel that have been produced in this

9 case.

10 Can you please identify for me the distinction

11 you're drawing between what's in those memos and

12 recommendations from John Strange versus what you have

13 instructed this witness not to answer?

14 MS. ZYLSTRA: Well, with respect to John

15 Strange, he appeared at numerous public hearings in

16 which he spoke in which he provided information and

17 testimony and argument and whatnot.

18 Certainly, we are not trying to claim

19 privilege on anything that involves John Strange in any

20 of his public facing statements, duties, et cetera. I

21 agree with that a hundred percent.

22 But that doesn't mean that he didn't also have

23 separate communications with city staff that may be

24 privileged.

25 I am not aware of Mr. Strange making any

<p style="text-align: right;">Page 54</p> <p>1 public -- or I'm not aware, as I sit here right now, of 2 him making any public discussions or whatnot as to -- 3 with regard to the topic that you're talking about here 4 with Mr. Hank. That's a distinction I'm drawing. 5 I agree this is a tough issue, and, you know, 6 I think we will have to navigate it. 7 MR. INGRISANO: So is it your position that 8 advice of the Plan Commission is not privileged but 9 advice to Mr. Hank and his staff is privileged? 10 MS. ZYLSTRA: I think it's not as black and 11 white as that. I think it depends on the circumstances 12 and the topic of which he may be performing his role. 13 MR. INGRISANO: I'm not going to just concede 14 that issue. 15 MS. ZYLSTRA: Understand. 16 Q. MR. INGRISANO: Mr. Hank, are you following 17 your attorney's advice not to answer that question? 18 A. Oh yes. 19 MS. ZYLSTRA: Well, and can I hear the 20 question back, please. 21 Q. MR. INGRISANO: Did John Strange recommend to 22 you or your department that you withhold this permit 23 application referenced in Exhibit 3? 24 MS. ZYLSTRA: Would you agree that if I 25 allowed him to answer that question that it would not be</p>	<p style="text-align: right;">Page 56</p> <p>1 approve, from an attorney standpoint, from a 2 recommendation standpoint, your decision to withhold the 3 permit? 4 MS. ZYLSTRA: Same stipulation? 5 A. I would -- 6 MS. ZYLSTRA: Wait, sorry. I needed an answer 7 on the record. 8 MR. INGRISANO: No, that's fine. Stipulation 9 is to nonwaiver on those two questions. 10 MS. ZYLSTRA: Correct. So you can answer, 11 Mr. Hank. 12 A. Again, I believe, if I remember correctly, it 13 was our discussions that we should do this. We informed 14 Mr. Strange, and I'll put it this way, generally, we 15 follow our attorney's advice. I guess I'm going to 16 leave it at that. 17 Q. I'm sorry, Mr. Hank, that's really not 18 responsive. 19 So you said you followed your attorney's 20 advice. My question goes to what advice did he give you 21 with respect to the issuance of the permit. 22 So I'm going to ask you, you and Mr. Tucker 23 decided non-issuance was appropriate. You go to 24 Mr. Strange, and Mr. Strange says what about your 25 decision regarding non-issuance?</p>
<p style="text-align: right;">Page 55</p> <p>1 a waiver of the privilege just the fact that he answered 2 that question. Would you be willing to agree to that? 3 MR. INGRISANO: If I can get a similar 4 stipulation that I'm not agreeing that other questions 5 are privileged. 6 MS. ZYLSTRA: Understand. I'm not saying that 7 that applies for everything else, but just for that 8 particular question you're not going to turn around and 9 argue that that's a waiver of the privilege, the fact 10 that I allowed him to answer that. 11 MR. INGRISANO: I won't use your permission 12 here as a waiver argument. 13 MS. ZYLSTRA: Okay. So, Mr. Hank, with that 14 in mind, I'm allowing you to answer that question, which 15 is did Mr. Strange recommend withholding of the permit, 16 I believe is the question. If you know, if you recall. 17 THE WITNESS: I'm trying to figure out the 18 best, accurate way to answer this. 19 Q. Don't let me distract you, I'm going to get 20 some water. 21 A. All right. My memory of this is, Matt and I 22 discussed this and it was our belief that we should 23 withhold it, and then later we conferred with 24 Mr. Strange. 25 Q. So my question then would be, did Mr. Strange</p>	<p style="text-align: right;">Page 57</p> <p>1 MS. ZYLSTRA: And for the record, same 2 stipulation? 3 MR. INGRISANO: Yes. 4 MS. ZYLSTRA: So you can answer that question, 5 Mr. Hank. 6 A. I don't remember him opposing what we thought 7 we should do. 8 Q. Is it your testimony that if he had opposed it 9 and had given you contrary advice, told you that your 10 decision was unwise in any way, you would have followed 11 his advice? Is that your testimony today? 12 MS. ZYLSTRA: I'll object to form. We're 13 still in the same stipulation from counsel, and based on 14 that stipulation I'll allow you to answer that. 15 A. And I'll go back to and generally I'm going to 16 say we follow our attorney's advice. 17 Q. But you don't recall what his advice was in 18 this particular instance? 19 MS. ZYLSTRA: Object to form, misstates 20 testimony. You can answer. 21 A. I don't remember him saying "no, you need to 22 do it." 23 Q. And you don't remember him saying "yes, this 24 is a solid idea" or words to that effect; fair? 25 A. I really don't want to characterize what he</p>

<p style="text-align: right;">Page 58</p> <p>1 said, but it -- if he would have said "no, you need to 2 do it," probably would have been a broader discussion 3 and that, and if he would have said "yes, you should do 4 it" we would have done it.</p> <p>5 I don't want to put words in his mouth whether 6 or not he thought it was a good idea. Was he saying 7 that he could defend our decision, or maybe he didn't 8 think it was the best decision but he could defend what 9 we were doing, that I don't know.</p> <p>10 Q. I need your best recollection of what John 11 Strange told you about your decision to not issue this 12 permit.</p> <p>13 MS. ZYLSTRA: Same stipulation?</p> <p>14 MR. INGRISANO: Yes.</p> <p>15 MS. ZYLSTRA: Thank you.</p> <p>16 A. I'm not trying to be evasive here. I just 17 don't remember if he was saying good idea, bad idea, or 18 I can defend what you're doing. I just don't remember.</p> <p>19 All I remember is we thought -- we said what 20 we thought was an issue and we ended up doing that.</p> <p>21 Q. Did any of your communications with 22 Mr. Strange on this particular issue, the non-issuance 23 of the Edgewood permit, did any of that occur in writing 24 either in the form of a memo or in the form of email or 25 any other form of written document?</p>	<p style="text-align: right;">Page 60</p> <p>1 permit to install the lights or the building permit to 2 build whatever they wanted to build. Those conditions 3 typically have to be fulfilled in order before we will 4 issue a permit that will go through this plan review 5 process outlined in Exhibit 3.</p> <p>6 So again, we would not want to actually issue 7 the permit until all the agencies have approved and 8 said, yes, this is okay, you can go forward.</p> <p>9 Because if now all of a sudden they find out 10 they have to do something significantly different on 11 some other aspect, they are going to go, well, if we 12 knew that, we never would have redone our outdoor patio 13 if we couldn't use it or something like that.</p> <p>14 Q. In conjunction with Edgewood's filing of this 15 permit and your department's review of it, Edgewood was 16 aware, were they not, of the position that Mr. Tucker 17 was taking regarding the permissible uses of the 18 athletic field?</p> <p>19 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>20 A. I believe they were aware, yes.</p> <p>21 Q. So your state of concern previously was that 22 if you approve a light, an outdoor lighting, and then 23 someone uses it in a way that's not permitted, they will 24 come back and be mad at you for granting their permit 25 application; correct?</p>
<p style="text-align: right;">Page 59</p> <p>1 A. I believe most of our discussions regarding 2 this were in person or over the phone, Zoom or whatever.</p> <p>3 Q. And seizing on the word "most," Mr. Hank, are 4 there, to your knowledge, any documents reflecting your 5 communications with Mr. Strange on the non-issuance of 6 this permit?</p> <p>7 MS. ZYLSTRA: Objection. Foundation.</p> <p>8 A. I -- I cannot definitively say. I'm sorry, 9 there's just thousands of emails.</p> <p>10 Q. Oh, I know. I've seen a lot of them.</p> <p>11 You had made a reference earlier that your 12 department can issue an outdoor lighting permit subject 13 to conditions. Do you recall saying that?</p> <p>14 A. Yes.</p> <p>15 Q. What sort -- well, what sort of conditions can 16 be imposed on an approval an issuance of an outdoor 17 lighting permit?</p> <p>18 MS. ZYLSTRA: Object to form. You can answer.</p> <p>19 A. Well, the big condition is you must do it to 20 the approved plan.</p> <p>21 We are not going -- so if somebody applies and 22 it's going through the conditional use process and 23 agencies are putting conditions on it, we would ask them 24 to meet all those conditions prior to the actual 25 issuance of any permit, lighting permit, the electrical</p>	<p style="text-align: right;">Page 61</p> <p>1 I think you mentioned, too, that there could 2 be a lawsuit about granting a permit application in 3 those circumstances; correct?</p> <p>4 A. You mean the applicant, if we issued the 5 permit to the applicant and then later we had to come 6 back and tell them, no, you can't actually use the 7 lights, I would view that as very problematic.</p> <p>8 Q. Yes. That was your concern with Edgewood was 9 that you would issue a light permit, they would not be 10 allowed to play games under those lights, and that they 11 would come back and be upset with your department for 12 granting that application, incurring the expense of 13 installing those lights, and then not being able to 14 fully use the field; is that fair?</p> <p>15 A. That is fair.</p> <p>16 Q. Is there any other reason beyond that, that 17 concern, that they would have unmet expectations; any 18 other reason to withhold that permit?</p> <p>19 MS. ZYLSTRA: Object to form. You can answer.</p> <p>20 A. Not that I'm aware of.</p> <p>21 Q. So if Edgewood was aware of the limitations 22 the City was trying to impose on the use of their field 23 but wanted to proceed forward with the lights anyway, 24 they should be able to get that permit, don't you agree?</p> <p>25 MS. ZYLSTRA: Object to form, foundation. You</p>

<p style="text-align: right;">Page 62</p> <p>1 can answer.</p> <p>2 A. I'm always concerned when somebody wants to</p> <p>3 give away their rights in order to do something. Um --</p> <p>4 Q. Mr. Hanks -- I'm sorry, go ahead. I thought</p> <p>5 you were done.</p> <p>6 A. By agreeing, by saying yes and issuing the</p> <p>7 permit to install the lights when we know their intended</p> <p>8 purpose, we're perceiving the purpose so they can play</p> <p>9 competitions, you know, on the field when we don't think</p> <p>10 that they are allowed. I think that in someways saying</p> <p>11 that, while they are not allowed, we are allowing them</p> <p>12 to do it anyways, and I struggle with that.</p> <p>13 Q. So is it your testimony today, sir, that the</p> <p>14 decision to withhold the permit from Edgewood was to</p> <p>15 protect Edgewood?</p> <p>16 MS. ZYLSTRA: Object to form. You can answer.</p> <p>17 A. Partly. And also allowing them to do it -- I</p> <p>18 think by doing it, tacit approval that they can use the</p> <p>19 lights as much as we say, no, you can't.</p> <p>20 Q. You mentioned the perception of the -- the</p> <p>21 perceiving of the uses of the property, or the</p> <p>22 perceiving of the uses of the lights.</p> <p>23 What in the light application tells you about</p> <p>24 what the proposed uses of the lights are? Or is it just</p> <p>25 self-explanatory from the application itself?</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. So there is the potential that practices --</p> <p>2 that a valid use under the master plan for that athletic</p> <p>3 field, i.e. practices, can incorporate lights; correct?</p> <p>4 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>5 You can answer.</p> <p>6 A. Could they practice under the lights? As long</p> <p>7 as the lighting met the 10.085, I'm not aware of.</p> <p>8 Q. So there is a permitted use under the master</p> <p>9 plan that is consistent with the use of outdoor lighting</p> <p>10 under the permit that was approved but withheld under</p> <p>11 Exhibit 3; correct?</p> <p>12 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>13 You can answer.</p> <p>14 A. I'm -- again, I'll answer this way. I am not</p> <p>15 intimately familiar with the master plan. I would think</p> <p>16 there is a better person to ask that question that has</p> <p>17 broader knowledge of it, but not that I'm aware of.</p> <p>18 Maybe I'm missing something.</p> <p>19 Q. Not that you're aware of what, sir?</p> <p>20 A. Is there something else in the master plan</p> <p>21 that would prohibit it, I'm not aware of it.</p> <p>22 Q. Has anyone ever cited to you anything in the</p> <p>23 master plan that would prohibit Edgewood from hosting,</p> <p>24 utilizing its field for practices at night using lights?</p> <p>25 MS. ZYLSTRA: Objection. Form. You can</p>
<p style="text-align: right;">Page 63</p> <p>1 A. If you're lighting a -- well, I'll refer to it</p> <p>2 as an athletic field. I guess, I would question why</p> <p>3 you're lighting it if it is not to conduct competitions</p> <p>4 there.</p> <p>5 Q. What were the permitted uses of the Edgewood</p> <p>6 athletic field as you understood it in 2019?</p> <p>7 A. That master plan, pre-master plan?</p> <p>8 Q. Do you know?</p> <p>9 A. What I'm asking is 2019 pre- or post-master</p> <p>10 plan?</p> <p>11 Q. 2019. February of 2019.</p> <p>12 A. If the master plan was in effect, I believe it</p> <p>13 was limited to practices and Phy Ed.</p> <p>14 If it was after the master plan was dissolved,</p> <p>15 it would have been governed at the time under what was</p> <p>16 allowed under the institutional zoning.</p> <p>17 Q. So Edgewood was free to host practices and</p> <p>18 hold practices on its field under the master plan as you</p> <p>19 interpreted it; is that right?</p> <p>20 A. That's correct.</p> <p>21 Q. Practices, is there any prohibition on holding</p> <p>22 practices at night under the master plan?</p> <p>23 MS. ZYLSTRA: Object. Form, foundation. You</p> <p>24 can answer.</p> <p>25 A. Not that I'm aware of.</p>	<p style="text-align: right;">Page 65</p> <p>1 answer.</p> <p>2 A. I don't -- I don't believe somebody has</p> <p>3 brought that to my attention.</p> <p>4 Q. So to the best of your knowledge there is at</p> <p>5 least one permitted use of the athletic field that could</p> <p>6 incorporate outdoor lighting at nighttime; is that</p> <p>7 right?</p> <p>8 MS. ZYLSTRA: Objection. Form, foundation,</p> <p>9 misstates testimony. You can answer.</p> <p>10 A. I would say probably, yes. In the same way if</p> <p>11 they decided to hold classes in the evening and wanted</p> <p>12 to do Phy Ed in the evening, I would say I'm not aware</p> <p>13 of something that would prevent that.</p> <p>14 Q. To your knowledge, was any issue with punt</p> <p>15 lighting on Edgewood's applications for outdoor lighting</p> <p>16 ever brought to their attention in writing?</p> <p>17 A. I am not specifically aware of that. I --</p> <p>18 yeah, I'm not specifically aware if it was in writing.</p> <p>19 Q. So if an outdoor lighting is issued -- outdoor</p> <p>20 lighting application permit is issued and granted,</p> <p>21 outdoor lighting is used, is installed upon the Edgewood</p> <p>22 field, and they use the lighting for practices but</p> <p>23 exceed that under the master plan -- under your</p> <p>24 interpretation of the master plan -- and also start</p> <p>25 hosting games which you say are not allowed under the</p>

<p style="text-align: right;">Page 66</p> <p>1 master plan at the time, your department has tools and 2 enforcement mechanisms at your disposal to make sure 3 that permitted uses under the master plan are adhered 4 to; correct? 5 MS. ZYLSTRA: Object to form. 6 A. Yes. 7 Q. And if, in fact, you utilized -- your 8 department utilized those tools in 2019 when you issued 9 official notices to Edgewood for hosting games on their 10 field; correct? 11 A. That's correct. 12 Q. So if Edgewood had lights on its field that's 13 used most of the time for practices but sometimes used 14 for games, you could issue an official notice to them 15 saying, hey, your using these lights for games is not 16 permitted because games are not allowed under the master 17 plan; correct? 18 A. That is correct. 19 Q. Would you be able to issue a lighting permit 20 subject to a condition that the lights not be used for 21 games? 22 MS. ZYLSTRA: Objection. Form, foundation. 23 You can answer. 24 Q. Or athletic contests? Excuse me. 25 A. Yeah, I like to think that I have a common</p>	<p style="text-align: right;">Page 68</p> <p>1 property. It is, does it meet the lighting standards. 2 The zoning review of the property where they 3 are adding a change to the property, you know, it wasn't 4 a lit field before where they are just re-fixturing, now 5 they are changing the intensity of the use. 6 So if they are installing lights so they can 7 have athletic competitions and have fans there to 8 look -- you know, watch games at night, that falls under 9 the use category. And it's my understanding that under 10 the requested permits at the time neither one was an 11 allowed use. 12 Q. But there was a permissible use for practices; 13 correct? 14 A. Correct. 15 MS. ZYLSTRA: Late objection. 16 THE WITNESS: I'm sorry. 17 MS. ZYLSTRA: That's okay. 18 Q. MR. INGRISANO: So, in essence, you're 19 substituting your judgment for what makes sense to 20 Edgewood's ability to use its facility for a permissible 21 use; is that right? 22 MS. ZYLSTRA: Objection. Form, foundation. 23 You can answer. 24 A. I'm not -- I'm not submitting my -- or using 25 my, what I'm going to say, my judgment. I'm just</p>
<p style="text-align: right;">Page 67</p> <p>1 sense approach, and I really struggle when somebody says 2 I'm going to do something that doesn't make sense. I 3 really struggle with that. 4 When somebody says they are not going to use 5 -- that they are going to only install it and use it for 6 practice and they are not going to use it for games, I 7 struggle with that. 8 Because my knowledge of that, of teams 9 practicing, they are trying to -- at least the ones I'm 10 thinking of, they don't practice, you know, after a time 11 when lights would be needed. 12 They are -- they are trying to get their 13 athletes home so that they can be with their families 14 for dinner and they can work on homework and stuff like 15 that. 16 Generally, you know, I'm not aware of -- 17 again, limited knowledge. I'm not aware of schools that 18 practice under lights. 19 Q. Your experiences that you're bringing to the 20 table, your conception of common sense, is that 21 reflected in Exhibit 1, Section 10.085, that would allow 22 you to withhold a permit because of those feelings that 23 you have? 24 MS. ZYLSTRA: Object to form. You can answer. 25 A. 10.085 does not generally refer to use of the</p>	<p style="text-align: right;">Page 69</p> <p>1 looking at and going, I'm not aware of anybody that 2 installs lighting just for practices. 3 Q. And that's a sufficient basis for you to 4 withhold that permit? 5 MS. ZYLSTRA: Objection. Form, foundation. 6 You can answer. 7 A. I'm not aware that Edgewood at any time said 8 that they just wanted to install them for lighting -- 9 excuse me, for practices. It was for so that they could 10 host athletic competitions. 11 Q. But Edgewood was informed of the City's 12 position, correct, that even if lights were provided 13 they would not be permitted to -- they would not be 14 permitted to host athletic competitions, contests on the 15 field, right? 16 MS. ZYLSTRA: Objection. Form, foundation. 17 A. It's my remembrance that, yes, they were told 18 at least at times that they could not hold athletic 19 competitions on the field. 20 Q. They did not withdraw their lighting 21 application in light of that disclosure by the City; 22 correct? 23 MS. ZYLSTRA: Objection. Form, foundation. 24 You can answer. 25 A. Not that I'm aware of.</p>

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1 Q. Did Mr. Tucker, to your knowledge, inform
2 Edgewood that approval of Edgewood's lighting
3 application in February of 2019 would not require an
4 amendment to the master plan?
5 MS. ZYLSTRA: Objection. Form.
6 A. I -- I don't know that.
7 MR. INGRISANO: Let's take a five-minute
8 break.
9 MS. ZYLSTRA: Okay.
10 (Recess)
11 (Exhibit 5 marked)
12 BY MR. INGRISANO:
13 Q. Sir, I'm handing you what's been marked as
14 Exhibit 5.
15 Have you ever seen this document before?
16 A. Not that I recall.
17 Q. Okay. Were you aware that Edgewood submitted
18 a second or alternative application for outdoor lighting
19 on or around September 30th, 2019?
20 A. Yes, I'm aware of that.
21 Q. What was the status -- whatever happened to
22 that application? Was that application approved and
23 issued, denied, or approved and withheld, or is there
24 some other option?
25 MS. ZYLSTRA: Objection. Foundation. Go

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1 ahead and answer.
2 A. I -- I believe, but, again, under 10.085 it
3 was approved, but I still believe we had the same
4 problem with whether or not the installation of the
5 lights created a change in use or intensity.
6 Q. Okay. With respect to the contents of this
7 letter, though, you don't recall reviewing that
8 alternative application; is that right?
9 A. No, I do not.
10 Q. So with respect to this idea, in the last
11 sentence of the first paragraph, "The revisions lower
12 the height of the four light poles from 80 feet to 68
13 feet, reduce the foot candle illumination intensity, and
14 remove punt lighting."
15 You can't say whether those revisions were
16 actually contained within that application; is that
17 right?
18 A. That is correct.
19 Q. Further, where it says, "As a reminder, the
20 existing approved application is identical to an
21 application submitted and used to issue twelve 80 foot
22 light poles with punt lighting at James Madison Memorial
23 High School in 2018," you don't know if -- you can't say
24 one way or the other whether that existing approved
25 application was in fact identical to Memorial's

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1 application?
2 A. That is correct.
3 (Exhibit 6 marked)
4 Q. MR. INGRISANO: Sir, I'm handing you what's
5 been marked as Exhibit 6, a letter to Mike Elliot, dated
6 February 27, 2019 from Matt Tucker.
7 Have you ever seen this letter before?
8 A. I believe so, yes.
9 Q. So just as a reminder, Exhibit 3 shows that
10 lighting was reviewed and approved on February 27 by
11 Steve Rewey; correct?
12 A. Yes.
13 Q. And then on March 1, received a zoning review
14 from Christina Thiele; correct?
15 A. That's correct.
16 Q. An approval -- excuse me -- dated March 1,
17 right?
18 A. That's correct.
19 Q. So on the earlier date, February 27, this
20 letter from Mr. Tucker, Mr. Tucker is Christina Thiele's
21 supervisor, right?
22 A. That is correct.
23 Q. And in the second paragraph of Exhibit 6, the
24 first line says, "the City believes this permit can be
25 issued without requiring amendment of the approved 2014

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1 master plan."
2 Do you see that?
3 A. Yes.
4 Q. The next paragraph goes on to say, "Based on
5 the information the City currently has regarding the
6 historical use of the facility, it would appear that the
7 intended use of the facility as outlined in your letter
8 to the 'Edgewood Family' and detailed in the 'Frequently
9 Asked Questions' document would conflict with the
10 approved 2014 master plan for the site, which limits use
11 of the facility to team practices, physical education
12 classes, page 42, Section 3.8, Open Space Plan."
13 Do you see that?
14 A. Uh-huh.
15 Q. I'm sorry?
16 A. Yes, I'm sorry.
17 Q. So this is a communication by Mr. Tucker
18 advising Mr. Elliot of the City's position with respect
19 to the use of the field; correct?
20 MS. ZYLSTRA: Objection to form. You can
21 answer.
22 A. Yes.
23 Q. In fact, the last paragraph says: The purpose
24 of this letter is to inform you that the issuance of any
25 lighting permit under MGO Section 10.085 does not change

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1 the City's position that the use of the facility under
2 the master plan is limited to, quote, "team practices,
3 physical education classes," end quote.
4 Do you see that?
5 A. Yes.
6 Q. So this letter does not inform Edgewood that
7 the lighting permit is going to be withheld; is that
8 right?
9 A. No, it does not.
10 Q. In fact, it informs Edgewood in the second
11 paragraph that the City believes that its light permit
12 can still be issued without requiring amendment of the
13 master plan; is that right?
14 A. It appears to read that way, yes.
15 Q. And so at what point in time after February 27
16 does the City change its position to decide that it
17 could not issue the permit given the contents of the
18 master plan?
19 A. As to a specific date, I'm sorry, I just don't
20 know that.
21 Q. Are you aware of the process by which -- so in
22 this letter they're saying, hey, you can't -- in this
23 letter they are saying you can get your lights without
24 needing to approve the master plan, but the subsequent
25 position by the City is that, no, you have to amend the

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1 master plan to get your lights; isn't that correct?
2 MS. ZYLSTRA: Objection. Form. You can
3 answer.
4 A. That is correct to my memory, yes.
5 Q. And you don't know -- let me ask you this:
6 What did Mr. Tucker tell you about why the
7 City was changing its position in this regard?
8 MS. ZYLSTRA: Objection. Form. You can
9 answer.
10 A. Specifics, I'm struggling to remember. But I
11 believe it was just a broader discussion that, you know,
12 why would you install lighting if you are not going to
13 have athletic competitions there.
14 Q. Who was involved in that broader discussion to
15 your knowledge?
16 A. I believe Matt and John Strange.
17 Q. Did anyone from outside of your department
18 weigh in to either you or, to your knowledge,
19 Mr. Tucker, to provide input that contributed to this
20 change in position?
21 A. People weighed in all the time about this
22 issue. Did it have a material impact on the decision we
23 made? I don't think so. We followed what we believed
24 with the master plan and ordinances set at the time.
25 Q. Did any city council alders or city council

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1 alders-elect contact your office, to your knowledge,
2 after February 27 and before your decision to make -- to
3 withhold the permit, to your knowledge?
4 A. Specifically, not that I remember, but I'm
5 sure there was.
6 Q. Do you recall receiving any input -- prior to
7 making the decision to withhold the permit, do you
8 recall receiving any input from members of the city
9 Common Council?
10 A. Not specifically that I recall. I'm sorry.
11 It's just -- again, there is -- there were hundreds of
12 emails, I'm sure you're well aware of, through open
13 records request where people weighed in on this.
14 And I guess I'll be blunt. Even as much as an
15 alder wants to think that they can impact what we're
16 doing, I told -- I've told alders "no" many times,
17 because I didn't believe the ordinances or whatever was
18 defensible in what they wanted us to do.
19 I had an alder once saying "I'd hate to
20 overrule you," and my response was "you can't," because
21 they cannot. I'm not going to do something that I
22 didn't believe I could defend under broke laws.
23 Q. Did Exhibit 6 and the position that the permit
24 could be issued without requiring amendment versus the
25 subsequent position that amendment would be required,

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1 did that involve you overruling Mr. Tucker in any way?
2 A. No, we tried to come to consensus and agree.
3 I never wanted to be in a position where I did not
4 agree with, let's say, something Matt was doing, and
5 say, yeah, I totally disagree with him but we did it
6 anyways.
7 Q. So you two were in accord on the decision to
8 change this position?
9 A. I believe so, yes.
10 Q. Do you have any recollection of particular
11 ordinance code sections that you relied upon in deciding
12 that, no, you couldn't issue this permit without
13 amendment to the master plan, what code provisions
14 vested you with that ability?
15 A. Again, if we're talking Campus-Institutional,
16 it would have been the zoning code. Specifically, not
17 even close.
18 Q. All right.
19 THE WITNESS: Can I ask, do they have like an
20 outdoor racquetball court here or something?
21 MS. ZYLSTRA: Let's go off the record.
22 (Discussion off the record)
23 Q. MR. INGRISANO: I'm going to ask you a
24 procedural question here for a minute.
25 A. Sure.

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1 Q. An application under an existing ordinance is
2 submitted on Day One and is under review, hasn't been
3 granted, hasn't been issued.
4 Day Two, the ordinance changes and changes the
5 analysis of the application that had been issued on Day
6 One.
7 Is that application assessed and judged under
8 the ordinances as they existed at the time of the
9 application or are they assessed and judged as of the
10 code during the time of analysis?
11 MS. ZYLSTRA: Objection. Form, foundation,
12 calls for a legal conclusion. You can answer.
13 Q. In your experience administering and
14 interpreting the municipal code.
15 MS. ZYLSTRA: Same objection. You can answer.
16 A. Okay. I will respond this way:
17 Under the building code, if you submit
18 something on a specific date, it is reviewed under the
19 building code that was applicable at that time.
20 I'm sorry, I don't know what the zoning
21 code -- if there is something in there that says, no, it
22 has to meet it when it was approved, that I don't know.
23 The building code, a lot of times there was an
24 -- if there was a change coming, people were rushing to
25 get plans in under the -- you know, under that date,

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1 because maybe a more stringent requirement was coming.
2 I just can't speak to zoning.
3 Q. Mr. Hank, is there anything you would have
4 done differently with the two Edgewood permits you have
5 seen today?
6 MS. ZYLSTRA: Objection. Form, foundation.
7 You can answer.
8 A. No, I don't think so.
9 Q. You would have, again, chosen to withhold
10 Edgewood's lighting permits?
11 MS. ZYLSTRA: Objection. Form, foundation.
12 You can answer.
13 A. As I know them right now, the answer is yes.
14 Q. We talked earlier about the
15 Campus-Institutional District. In general, I recall you
16 saying that you really didn't have anything to do with
17 the creation of the Campus-Institutional District zoning
18 code criteria.
19 A. No.
20 Q. So you're not familiar with or don't apply
21 kind of on a daily basis the idea of the uses that are
22 described -- permitted uses that are described in the
23 Campus-Institutional districts?
24 A. Not at all.
25 Q. You didn't have any involvement, did you, in

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1 the drafting, review, or adoption of Edgewood's master
2 plan in 2014?
3 A. Definitely not.
4 Q. In your job, though, do you recognize a
5 distinction between a master plan in the
6 Campus-Institutional District context versus a master
7 plan in the planned development, or PD, district
8 context?
9 MS. ZYLSTRA: I'm sorry. Can you repeat that
10 question for me?
11 (Record read)
12 A. I'll answer it this way: My limited
13 knowledge, the master plan is the zoning. So I'm not
14 sure if it really makes any difference under one or
15 another.
16 Q. You're not familiar, though, with the criteria
17 or the purposes or the objectives of a
18 Campus-Institutional master plan versus a PD master
19 plan?
20 A. No.
21 Q. Prior to 2019, had you ever looked at
22 Edgewood's master plan?
23 A. I don't remember the specific date, but I
24 became aware of it when lighting the field first became
25 an issue. I don't remember what that date was.

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1 Q. Sure. So did you review the master plan in
2 that context?
3 A. There were specific things that were discussed
4 under what was allowed under the master plan.
5 Q. My question was geared towards did you
6 actually review a copy of the a master plan at that
7 time?
8 A. If I remember correctly, it was brought up on
9 a monitor in Mr. Tucker's office.
10 Q. Do you recall any particular sections or
11 provisions of that master plan that you reviewed?
12 A. I think, as discussed earlier, we looked at
13 the section that pertained to open space and also some
14 general provisions about lighting.
15 Q. The general provisions about lighting,
16 however, weren't part of your rationale at any time for
17 why those permits were withheld; is that right? So far
18 you've only talked about open spaces --
19 A. I don't think so. I believe it was pretty
20 much with regards to the uses that was outlined in the
21 open space.
22 You know, the lighting, if I remember,
23 referred to like pedestrian walkways and building
24 lighting, which, you know, that it had to meet. It
25 should be dark sky compliant, things of that nature.

<p style="text-align: right;">Page 82</p> <p>1 (Exhibit 7 marked)</p> <p>2 Q. MR. INGRISANO: Sir, I'm going to ask you if</p> <p>3 you can recognize this document, Exhibit 7, as the first</p> <p>4 page being again the City of Madison Site Plan</p> <p>5 Verification.</p> <p>6 But, generally, do you recognize this as being</p> <p>7 the Madison Edgewood Master Plan that was approved in</p> <p>8 2014?</p> <p>9 A. Yes.</p> <p>10 Q. Go to the Open Spaces page. Bear with me for</p> <p>11 a minute. It should be after page 15, Section 3.8, sir.</p> <p>12 A. Page 15?</p> <p>13 Q. No, no, it's Section 3.8. It's going to be</p> <p>14 after -- hang on, I'm about there. All right. Page 42</p> <p>15 on the bottom there. This says, Section 3.8, Open Space</p> <p>16 Plan. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And you see down there is a subsection midway</p> <p>19 down the first column entitled "Open Spaces"?</p> <p>20 A. Yes.</p> <p>21 Q. No. 1, Athletic field owned by Edgewood High</p> <p>22 School. Used for team practices, comma, physical</p> <p>23 education classes?</p> <p>24 A. Yes.</p> <p>25 Q. Is that the language that the City has relied</p>	<p style="text-align: right;">Page 84</p> <p>1 contests on that field; correct?</p> <p>2 A. Yes.</p> <p>3 Q. And, in fact, he's saying that 3.8, page 42,</p> <p>4 says that the use of that athletic field is limited</p> <p>5 to team practices and physical education classes;</p> <p>6 correct?</p> <p>7 A. That's what it's saying.</p> <p>8 Q. Is there any other provision in this document,</p> <p>9 master plan -- I'm asking you to look at the</p> <p>10 Campus-Institutional code.</p> <p>11 Any other document in this master plan, any</p> <p>12 other provision, any other page that to your knowledge</p> <p>13 the City has relied upon for the idea that Edgewood</p> <p>14 cannot play games, athletic contests on its athletic</p> <p>15 field?</p> <p>16 A. To my knowledge, no.</p> <p>17 Q. And it was the prohibition on athletic</p> <p>18 contests in the master plan as you guys interpret it,</p> <p>19 the City, that caused the withholding of the light</p> <p>20 permit; correct?</p> <p>21 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>22 You can answer.</p> <p>23 A. Under the Open Space Plan, yes.</p> <p>24 Q. And as the director of the building inspection</p> <p>25 department that is the head of that unit which oversees</p>
<p style="text-align: right;">Page 83</p> <p>1 upon, to your knowledge, to withhold permits for the</p> <p>2 City lighting?</p> <p>3 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>4 You can answer.</p> <p>5 Q. For the outdoor lighting, excuse me.</p> <p>6 A. Under the master plan criteria, yes.</p> <p>7 Q. And this is the language that the City has</p> <p>8 relied upon for its position in 2019 that athletic</p> <p>9 contests could not be played on the athletic field; is</p> <p>10 that right?</p> <p>11 MS. ZYLSTRA: Object to form, foundation. You</p> <p>12 can answer.</p> <p>13 A. I am not sure to be honest with you if it was,</p> <p>14 at that time, Campus-Institutional that was in play at</p> <p>15 that point, and I don't think this would then come into</p> <p>16 play.</p> <p>17 Sorry, again, master plan and</p> <p>18 Campus-Institutional, where that line is when one ceased</p> <p>19 to be in effect and when the other one started, I don't</p> <p>20 know what that date is and which one governed.</p> <p>21 Q. Sure. Exhibit 6, sir, Mr. Tucker's letter,</p> <p>22 Exhibit 6, right here.</p> <p>23 A. Yeah.</p> <p>24 Q. He's citing 3.8, the Open Space Plan, as being</p> <p>25 what limits Edgewood from its ability to host athletic</p>	<p style="text-align: right;">Page 85</p> <p>1 the zoning administrator, that was your understanding of</p> <p>2 the City's position on why games couldn't be played and</p> <p>3 why lights were withheld; correct?</p> <p>4 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>5 You can answer.</p> <p>6 A. Again, the answer is yes, assuming that it was</p> <p>7 the master plan that was governing the decision at that</p> <p>8 time.</p> <p>9 Q. The master plan is what Mr. Tucker cited in</p> <p>10 his February 27, 2019 letter in Exhibit 6; correct?</p> <p>11 MS. ZYLSTRA: Objection. Form, asked and</p> <p>12 answered. You can answer again.</p> <p>13 A. You're asking me to --</p> <p>14 Q. I just asked you what Mr. Tucker cited in his</p> <p>15 letter.</p> <p>16 A. His letter he cites it, yes.</p> <p>17 Q. Has Mr. Tucker ever expressed to you any</p> <p>18 additional grounds by which to disallow games that</p> <p>19 aren't cited in Exhibit 6?</p> <p>20 A. Not that I'm aware of.</p> <p>21 Q. He never shared any other reasons that might</p> <p>22 be out there with you?</p> <p>23 A. Not that I'm aware of.</p> <p>24 Q. Did he share any other reasons beyond 3.8 for</p> <p>25 withholding lights?</p>

<p style="text-align: right;">Page 86</p> <p>1 MS. ZYLSTRA: Objection. Form, foundation. 2 You can answer. 3 A. Not that I'm aware of. 4 Q. As you read that page, Open Spaces, bullet 5 point No. 1 on the use of the athletic field, did you 6 agree that that provision restricted the use of the 7 athletic field, that content of the master plan 8 restricted use of the athletic field? 9 A. Yes, I agreed with that. 10 Q. And did you understand master plans at that 11 point of everything in a master plan is a restriction on 12 how the property is supposed to be used? 13 MS. ZYLSTRA: Objection. Form. 14 Q. That was a bad question. 15 If a master plan denotes -- based on what you 16 know about master plans, do you have an understanding 17 that if a master plan says that a field is going to be 18 used for an activity that that is the only activity that 19 it can be used for? 20 MS. ZYLSTRA: Objection. Form, foundation. 21 You can answer. 22 A. If somebody -- if they came to us and said we 23 want to do X with it, I think we would look at it and 24 just have a discussion and say under this -- when I look 25 at this and see that athletic field owned by Edgewood</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. When you played football at Edgewood did you 2 ever participate in a scrimmage with another team? 3 A. On that field, I don't think so. 4 Q. Anywhere? 5 A. Oh sure. 6 Q. Is a scrimmage, is that an athletic contest or 7 is that a practice? 8 MS. ZYLSTRA: Objection. Form, foundation. 9 You can answer. 10 A. I would -- I would say that it is a practice. 11 Q. Based on what? 12 A. Not really concerned about the score. 13 Q. So it's kind of like an exhibition? 14 MS. ZYLSTRA: Objection. Form, foundation. 15 You can answer. 16 A. I wouldn't go that far. An exhibition means 17 you're still trying to -- you may consider whether or 18 not how many -- you know, who scored and how many 19 touchdowns and that. 20 My remembrance of scrimmages, you just line up 21 and one plays and you get to see how your particular 22 offense or defense is doing and how players are doing. 23 I don't really consider it a competition. 24 Q. Got it. Your department issued a permit in 25 2015 for the electrical for the installation of the</p>
<p style="text-align: right;">Page 87</p> <p>1 High School used for team practices, physical education 2 classes, and trying to say that athletic competition is 3 being held there, I really struggle saying that that 4 wasn't -- on why that would be omitted. 5 Q. So the master plan indicates a project that's 6 going to have a proposed future use of being a flag 7 football field. 8 Under your understanding of master plans, that 9 space can only be used for flag football; is that 10 correct? 11 MS. ZYLSTRA: Object to form, foundation. You 12 can answer. 13 A. So if it says used for flag football and they 14 wanted to do something that would be comparable to flag 15 football, I could see where you would maybe have a 16 broader discussion and say could we approve it under 17 that. 18 I, again, find the omission of team practices 19 and physical education and omitting that they are going 20 to have competitions there seems challenging. 21 Q. What's your definition of what a team practice 22 is? 23 MS. ZYLSTRA: Object to form. You can answer. 24 A. The gathering of the team and working through 25 plays, plans, practicing those plays, conditioning.</p>	<p style="text-align: right;">Page 89</p> <p>1 scoreboard on the Edgewood field; correct? 2 MS. ZYLSTRA: Objection. Form, foundation. 3 You can answer. 4 A. I don't think we actually did it for a 5 scoreboard. I thought it was for underground conduit. 6 So the -- it was my understanding that the 7 practice field was going to be installed, the turf for 8 that, and if you're ever thinking about doing lighting 9 or anything in the future, you would -- you would want 10 to get those pipes in place so you did not have to 11 create a mess later. 12 Q. So are you saying that you were unaware that 13 Edgewood installed a scoreboard in 2015? 14 A. I'm not -- I'm not aware that the permit 15 specified a scoreboard. 16 Q. Were you aware that Edgewood installed a 17 scoreboard in 2015? 18 A. I heard they did that later. 19 Q. You heard later that they did that or -- 20 A. I began -- I -- 21 Q. I'm sorry, sir, you have to let me finish my 22 question. 23 A. Sure. 24 Q. When you heard it later, you learned later 25 that they installed it or you learned that they</p>

<p style="text-align: right;">Page 90</p> <p>1 installed it later than in 2015?</p> <p>2 MS. ZYLSTRA: Object to form, but go ahead and</p> <p>3 answer.</p> <p>4 A. I became aware that it was there when we</p> <p>5 received complaints from people regarding the buzzer</p> <p>6 that was built into it.</p> <p>7 And prior to that, I don't think I knew that</p> <p>8 they had a scoreboard there.</p> <p>9 Q. Would you agree with me that the scoreboard,</p> <p>10 if you don't keep score and are not worried about score</p> <p>11 in practices, you don't need a scoreboard for practices;</p> <p>12 is that right?</p> <p>13 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>14 You can answer.</p> <p>15 A. Necessary? I know some places use it. You</p> <p>16 know, I think of basketball, you know, where teams will</p> <p>17 be -- you know, a team may be playing, you know, itself,</p> <p>18 JV against varsity. They will have the clock running.</p> <p>19 You know, I could see where they might do</p> <p>20 something like that and have somebody acting as the</p> <p>21 referee and doing, okay, it's 2nd and 3, and, you know,</p> <p>22 they may possibly be doing that. I don't know.</p> <p>23 Q. So your installation of the scoreboard is not</p> <p>24 a violation of the master plan at that time as of early</p> <p>25 2019 to your understanding?</p>	<p style="text-align: right;">Page 92</p> <p>1 considerations of being able to hold practices later in</p> <p>2 the day. Is that what I'm hearing you say?</p> <p>3 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>4 You can answer.</p> <p>5 A. Can you try that one more time?</p> <p>6 MR. INGRISANO: Can you read that back,</p> <p>7 please.</p> <p>8 (Record read)</p> <p>9 A. I don't necessarily think one leads to the</p> <p>10 other. I believe that -- you know, again, I'll go back</p> <p>11 to, I can see where an institution would want to have a</p> <p>12 scoreboard and simulate game conditions during a</p> <p>13 practice.</p> <p>14 Q. If the master plan just simply said "athletic</p> <p>15 field," period, didn't go on to that next sentence,</p> <p>16 would they have been permitted to install lights?</p> <p>17 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>18 You can answer if you know.</p> <p>19 A. It certainly would make it easier, I would</p> <p>20 think.</p> <p>21 Q. Would they have been permitted to play games,</p> <p>22 athletic contests on that field?</p> <p>23 MS. ZYLSTRA: Same objections.</p> <p>24 A. I would think so.</p> <p>25 Q. Do you have any understanding -- has anyone</p>
<p style="text-align: right;">Page 91</p> <p>1 MS. ZYLSTRA: Object to form, foundation.</p> <p>2 A. That, I don't specifically -- I don't know the</p> <p>3 master plan well enough to say whether or not that's a</p> <p>4 violation.</p> <p>5 Q. Does it make sense to you to have a scoreboard</p> <p>6 installed for practices but then not have lights</p> <p>7 installed for practices?</p> <p>8 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>9 Q. I'll re-ask that question.</p> <p>10 What I'm hearing you say is that you can</p> <p>11 understand how you're going to have a scoreboard for</p> <p>12 practice, but you don't agree that you would want to</p> <p>13 have lights for practice.</p> <p>14 Is that a fair statement of what your</p> <p>15 understanding is?</p> <p>16 MS. ZYLSTRA: Objection. Form.</p> <p>17 A. Again, I can think of why an institution may</p> <p>18 want to have a scoreboard there so that they can</p> <p>19 simulate game conditions.</p> <p>20 But game conditions, you know, for a team</p> <p>21 could be -- you know, that could be during the day</p> <p>22 during practices. Again, I don't think it necessarily</p> <p>23 means that one leads to another.</p> <p>24 Q. So the ability to simulate a game during</p> <p>25 practice is more important than the scheduling</p>	<p style="text-align: right;">Page 93</p> <p>1 from Edgewood ever told you that it was Edgewood's</p> <p>2 intent in their master plan to limit the use of the</p> <p>3 field team practices and physical education classes?</p> <p>4 A. Nobody has said that to me.</p> <p>5 Q. To your knowledge, must a master plan identify</p> <p>6 the specific uses that an open space or a sports</p> <p>7 recreational facility is going to be used for?</p> <p>8 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>9 You can answer.</p> <p>10 A. If it said used for team practices, physical</p> <p>11 education, and football games, and then they come back</p> <p>12 later and somebody is playing field hockey on it, I</p> <p>13 think you could maybe say, you know, they didn't</p> <p>14 envision -- they weren't playing field hockey at the</p> <p>15 time, they are now doing field hockey.</p> <p>16 You know, when I was there they didn't play</p> <p>17 soccer.</p> <p>18 Q. No one played soccer in '75.</p> <p>19 A. What's that?</p> <p>20 Q. No one played soccer in America in '75.</p> <p>21 A. Yes.</p> <p>22 Q. Let me put a finer point on it, though.</p> <p>23 If the master plan had just said athletic</p> <p>24 fields, period, to your understanding of how master</p> <p>25 plans work, would the City have gone back and required</p>

<p style="text-align: right;">Page 94</p> <p>1 them in more detail to specify the use of that space?</p> <p>2 For example: No, no, no, Edgewood, you have</p> <p>3 to identify more specifically than "athletic fields,"</p> <p>4 what it's going to be used for.</p> <p>5 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>6 You can answer.</p> <p>7 A. If it said that, I would think it would be a</p> <p>8 lot easier to approve it.</p> <p>9 Q. My question is, to your understanding to how</p> <p>10 things work in your world, the division -- the</p> <p>11 department that you're the head of, I'm asking if you</p> <p>12 have an understanding as to whether athletic fields,</p> <p>13 period, without that next sentence, whether that would</p> <p>14 have been acceptable for the City's position as to the</p> <p>15 description of the use of that space?</p> <p>16 MS. ZYLSTRA: Objection. Foundation, form.</p> <p>17 You can answer.</p> <p>18 A. I would certainly want to involve the city</p> <p>19 attorney's office and ask them to have a broader</p> <p>20 discussion on this to make sure that they felt that if</p> <p>21 we made a decision one way or another and we were going</p> <p>22 to end up in court, that they could support the decision</p> <p>23 that we were making.</p> <p>24 Q. So your answer to my question is that you</p> <p>25 believe that the city attorney's office would be brought</p>	<p style="text-align: right;">Page 96</p> <p>1 2019, Mr. Brodsky is raising the issue of the asserted</p> <p>2 noncomplying use of the athletic field, correct, and</p> <p>3 what basically your department is going to do about it?</p> <p>4 MS. ZYLSTRA: I'll object to form. You can</p> <p>5 answer. Please feel free to review the document.</p> <p>6 THE WITNESS: Please, yes.</p> <p>7 A. Okay. So what's your question?</p> <p>8 Q. So this is a letter where -- well, let me put</p> <p>9 a finer point on it.</p> <p>10 First page, bottom of first page, one, two --</p> <p>11 three paragraphs into Mr. Brodsky's email:</p> <p>12 "Has the City position changed from what was</p> <p>13 expressed in the letter from Attorney Strange to</p> <p>14 Edgewood's attorneys on 3/21 and in the notice of</p> <p>15 violation to Edgewood on 4/1?"</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. So he's following up to see what your position</p> <p>19 is on what's going on with Edgewood and its noncomplying</p> <p>20 use of its field, right?</p> <p>21 A. Yes.</p> <p>22 Q. And you take the opportunity to describe the</p> <p>23 difference between a citation and an official notice; is</p> <p>24 that right?</p> <p>25 A. That is correct.</p>
<p style="text-align: right;">Page 95</p> <p>1 in during the review and approval phase of a master plan</p> <p>2 if the contents weren't specific enough. Is that what</p> <p>3 your answer is, sir?</p> <p>4 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>5 You can answer.</p> <p>6 A. I would want to, yes.</p> <p>7 Q. Is that the position of your zoning</p> <p>8 administrator of the planning division as you're aware</p> <p>9 of it?</p> <p>10 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>11 A. I'm not going to speak for him.</p> <p>12 (Exhibit 8 marked)</p> <p>13 Q. MR. INGRISANO: I'm handing you what's marked</p> <p>14 as Exhibit 8.</p> <p>15 A. Uh-huh.</p> <p>16 Q. Do you recognize this, sir, as an email</p> <p>17 exchange between you and a Mr. Ethan Brodsky?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Sorry, yes?</p> <p>20 A. Yes, I'm sorry.</p> <p>21 Q. That's okay. You're doing a good job.</p> <p>22 And it's copied to Mr. Matthew Tucker;</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. And in this email exchange, dated from May of</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. What is the difference between those two</p> <p>2 things?</p> <p>3 A. An official notice is basically a warning. We</p> <p>4 observe a violation, correct it by such and such a date,</p> <p>5 and there is no penalty. If you don't, then we'll go</p> <p>6 back from when we first saw it until you get into</p> <p>7 compliance.</p> <p>8 Q. Got it.</p> <p>9 A. The citation is a ticket. It's a one-day</p> <p>10 fine. So we could have -- say, if we chose somebody --</p> <p>11 a great example is somebody doesn't shovel their</p> <p>12 sidewalk, they get a ticket for that one day because</p> <p>13 they didn't shovel their sidewalk.</p> <p>14 The next day if we went there and the same</p> <p>15 snow is there we could ticket them again.</p> <p>16 Q. Got it. Do you have to issue an official</p> <p>17 notice before issuing a citation?</p> <p>18 MS. ZYLSTRA: I'll object to form. You can</p> <p>19 answer.</p> <p>20 A. No, you do not. There is one ordinance, the</p> <p>21 snow ordinance, that says that enforcement shall be</p> <p>22 commenced with a citation. I believe that's the only</p> <p>23 one that's listed that way.</p> <p>24 We could, for something really egregious, go</p> <p>25 straight to a ticket; here's your ticket, what you did</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 was really bad, we're going to follow up in two weeks 2 and if it's still going on we may issue another -- or we 3 would issue another ticket. 4 Q. And then Exhibit 8, second paragraph of your 5 email back to Mr. Brodsky, "The City has not changed its 6 position. We do not believe their master plan allows 7 athletic competitions. Only team practices and physical 8 education classes are allowed." 9 Do you see that? 10 A. That's correct. 11 Q. You said the City has not changed its 12 position, we do not believe. Is the "we" there, does 13 that refer to the City? 14 A. Yes. 15 Q. So you're speaking on behalf of the City of 16 Madison? 17 A. At that point, yes. 18 Q. At any point have you not spoken for the City 19 of Madison in your statements to either Edgewood or the 20 citizens of Madison on this issue? 21 MS. ZYLSTRA: Objection. Form, foundation. 22 You can answer. 23 A. I believe I have only given what is my 24 position as a City employee. 25 Q. But you did say that "we" refers to the City</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. So prior to the soccer games being brought to 2 your attention in 2019, were you or anyone in your 3 department aware of any games being played, any athletic 4 contests being played on that field since the 5 institution of the master plan? 6 MS. ZYLSTRA: Objection. Form, foundation. 7 You can answer. 8 Q. To your knowledge. 9 A. My knowledge, no. 10 Q. So as far as you know, the Edgewood games in 11 2019 were the first time that you had ever heard -- and 12 since 2013, 2014 -- that games were being played on the 13 field; is that right? 14 A. My personal knowledge, yes. 15 Q. And no one has told you that any -- no one 16 from your department, no one that you supervised, has 17 told you that they were aware of games being played 18 earlier than that, that they learned earlier than these 19 games in 2019 that there were, in fact, athletic 20 contests being held onsite? 21 MS. ZYLSTRA: I'll object to form. You can 22 answer. 23 A. Not that I'm aware of. If somebody like -- 24 say, when the soccer issue came up, and if somebody said 25 to one of my staff, oh, yeah, they did it last year</p>
<p style="text-align: right;">Page 99</p> <p>1 in Exhibit 8? 2 A. Yes. 3 Q. Okay. Who is Ethan Brodsky? 4 A. He's a neighbor of Edgewood. 5 Q. Was Mr. Brodsky a source of any information 6 for you, your department, that was relied upon in making 7 your decision either to withhold lights or to issue the 8 official notices? 9 MS. ZYLSTRA: Object to form. You can answer. 10 A. Is he -- can you ask that question again? I 11 just want to make sure. 12 MR. INGRISANO: Yeah, can you re-read that, 13 please. 14 (Record read) 15 MS. ZYLSTRA: Same objection. You can answer. 16 A. Certainly not to withhold lights. I can't 17 think of anything that he told us. 18 We would not rely on -- I think on what he's 19 telling us to look at the master plan. 20 I'm not sure if it was him or some other 21 neighbor that brought to our attention that they were 22 playing -- I think it was soccer games there at the 23 time, which we were not aware of. And since that was 24 brought to our attention we went and looked at it, just 25 like any other complaint.</p>	<p style="text-align: right;">Page 101</p> <p>1 also, I would not have knowledge of that. 2 Q. Sure. I'm only asking what you have knowledge 3 of. 4 A. Yeah. No, I am not aware of prior to when the 5 soccer issue came up, I am not aware of athletic 6 competitions being held there. 7 Q. Sure. So going back to your time even before 8 Edgewood became Campus-Institutional, even before the 9 master plan, dating all the way back to your time as a 10 student at Edgewood, these complaints about soccer games 11 in 2019 were the first time that you had ever heard 12 about games being played on that field; is that correct? 13 A. I have subsequently heard that like in -- 14 Q. Sir, I asked you about the first time you 15 heard, all right? I am not asking what you may have 16 learned since then. 17 These reportings in 2019, the first time you'd 18 ever heard of games being played on that field. 19 MS. ZYLSTRA: Object to form. Go ahead. 20 A. Yeah, I have heard that when the issue of the 21 master plan and what it could be used for somebody said, 22 well, they were playing games in the '20s and '30s. So 23 I had heard that from, I think, somebody at Edgewood or 24 whatever, that a game -- a couple of games had been 25 played there. I have no idea how many.</p>

<p style="text-align: right;">Page 102</p> <p>1 From like my time there in '70 through '75, 2 yeah, I think the first time I'm aware of a game being 3 played there was during that soccer issue. 4 Q. Sure. So we're talking about the official 5 notices and the citations. 6 If lights had been installed on the field and 7 the field was used for games or athletic contests, 8 contrary to what you believe the master plan provides, 9 you would be able to issue a citation or an official 10 notice for that breach; correct? 11 MS. ZYLSTRA: Objection. Form, asked and 12 answered. You can answer. 13 A. Yes. 14 (Exhibit 9 marked) 15 Q. MR. INGRISANO: Sir, do you recognize that as 16 an official notice issued by your department, dated 17 April 1, 2019? 18 A. Yes. 19 Q. Jacob Moskowitz, was he an employee that 20 reported to you at that time? 21 A. He directly reported to Matt, but, yes, his 22 ultimate supervisor, yes. 23 Q. Can you describe, sir, the process that 24 resulted in this particular official notice? How did 25 this official notice come to be, if you know?</p>	<p style="text-align: right;">Page 104</p> <p>1 first learned that it was -- you know, before you first 2 suggested that the master plan prohibited games, do you 3 recall that your department received any complaints 4 about games being played on the field? Were there ever 5 any complains about games being played in 2018, 2017, 6 2016 to your knowledge? 7 A. To my knowledge, no. 8 Q. Is it your understanding that Edgewood first 9 started playing games on its field in May -- April-May 10 of 2019? Or are there games that were being played 11 prior to that that you weren't aware of? 12 MS. ZYLSTRA: Object to form, foundation. 13 A. So looking at this document -- 14 Q. I'm not asking about the document, sir. I'm 15 asking about your state of knowledge. 16 I'm asking you about whether it's your 17 understanding that these May games that are the subject 18 of Exhibit 9 were the first such instance of games being 19 played, or whether based on what you've learned even 20 since then that there were other games being played on 21 the field that you simply either can't recall or weren't 22 aware of? 23 A. Again, I'm looking at this, it says it's 24 inspected by Jacob on 3/27/2019. Based on this, I would 25 believe that there was a game being played then.</p>
<p style="text-align: right;">Page 103</p> <p>1 A. It's my remembrance that we received 2 complaints that they were actually holding athletic 3 competitions there, so Jacob went there to observe. 4 There was -- you could see online when games 5 were scheduled, so he went there at specific times when 6 supposedly a game would be playing to see if they were 7 actually playing. 8 Q. So the games were -- the existence of the 9 games were posted online? 10 A. It's my understanding. 11 Q. On what? 12 A. Something like that. It was -- maybe it was 13 -- it's my memory that there was some electronic posting 14 of it and we became aware of it through there. 15 It may have been from a neighbor that 16 forwarded something to us, but I believe it was an 17 electronic posting. 18 Q. Do you know when the City first developed its 19 interpretation that the Edgewood Master Plan prohibited 20 athletic contests? 21 A. No. 22 MS. ZYLSTRA: Object. Foundation. You can 23 answer. 24 A. I'm sorry. 25 Q. Prior to, but before that time in which you</p>	<p style="text-align: right;">Page 105</p> <p>1 Q. Okay. So prior to March 27, is it your 2 understanding that March 27 was the first time that 3 Edgewood was starting to use its fields for games or 4 that there were other games that had been played even 5 before that? 6 MS. ZYLSTRA: Objection. Form, foundation. 7 You can answer. 8 A. I would believe that there should have been a 9 game prior to that because we went out there on the 27th 10 as a result of a complaint that they were playing games 11 there. 12 Q. That makes sense. 2019, was that the first 13 time then -- 14 A. Yes. 15 Q. -- that you believe Edgewood ever started 16 using its fields for games? 17 A. Yes. 18 Q. The complaint that's under 28.097, 19 "Discontinuing holding athletic contests on the athletic 20 field on 2219 Monroe Street." 21 Do you see that? 22 A. Uh-huh. 23 Q. Is that yes? 24 A. Yes, I'm sorry. 25 Q. "Campus Master Plan states that the athletic</p>

<p style="text-align: right;">Page 106</p> <p>1 field is used for team practices and physical education 2 classes," period. 3 Do you see that? 4 A. Yes. 5 Q. It says, "The Master Plan can be amended 6 pursuant to MGO 28.097(10)." 7 Do you see that? 8 A. Uh-huh. 9 Q. Is that yes? 10 A. Yes. 11 Q. Do you know who assigned Mr. Moskowitz to 12 investigate this situation that resulted in the official 13 notice? 14 A. Jacob could have self-assigned. The complaint 15 is in the system. Or Matt Tucker could have given it to 16 him. 17 Jacob was the lead worker for the field staff, 18 so if it was there he could have just said, "I'll do 19 this myself," if it was in the tank of things to be 20 looked at. Or Matt could have said -- it would be a 21 good question for Matt when you deal with him on Friday. 22 Q. Does every complaint from a neighbor or a 23 citizen of the City of Madison result in an 24 investigation like what Mr. Moskowitz performed here? 25 MS. ZYLSTRA: Objection. Form, foundation.</p>	<p style="text-align: right;">Page 108</p> <p>1 to go look at that. 2 MS. ZYLSTRA: Counsel, can we take a really 3 quick bathroom break? 4 MR. INGRISANO: Sure. Absolutely. 5 (Recess) 6 BY MR. INGRISANO: 7 Q. Mr. Hank, do you know what particular 8 complaints or referrals came into your office that 9 resulted in the investigation on 3/27/2019 in Exhibit 9? 10 A. No. 11 Q. Do you know was there more than one to your 12 knowledge? 13 A. I believe so, yes. 14 Q. Any from members of the Common Council? 15 A. Not that I'm aware of. 16 Q. Prior to -- did you know when that complaint 17 came in? Or that one or more complaints that resulted 18 in this investigation, do you know when those complaints 19 came in? 20 A. Other than probably mid-March, no. 21 Q. Before mid-March, in or before mid-March to 22 your knowledge had Mr. Moskowitz been apprised that 23 games on the -- or athletic contests on the athletic 24 field would be considered a violation of the master 25 plan?</p>
<p style="text-align: right;">Page 107</p> <p>1 You can answer. 2 A. If it alleges a violation of something that 3 would be in a violation, I would say yes. The -- if 4 somebody -- you said a complaint. 5 If somebody complained about something that 6 wasn't a violation of city ordinance we're not going to 7 go look at it, at least my department isn't. 8 Q. So every complaint received by your office, 9 does that result in somebody taking a look to see if 10 that complaint arises to the level of a violation of the 11 code? 12 MS. ZYLSTRA: Objection. Form, foundation. 13 You can answer. 14 A. I want to figure out how -- I'm going to say 15 yes, there -- the exception to that would be, you 16 complain today on something, we issue an official 17 notice, they have got 30 days to comply, and if every 18 thing single day after that we get a complaint, we're 19 not going to go out and keep looking at it because we 20 have already seen it, we have had a due date of when 21 it's supposed to be done, we're not going to keep 22 looking at it during that timeframe. 23 But if somebody -- generally, I'm going to say 24 if somebody calls up and says "my neighbor hasn't cut 25 their grass and it's 10 inches long," yes, we're going</p>	<p style="text-align: right;">Page 109</p> <p>1 A. I have no idea if he's had discussions with 2 Matt and John whether or not it would be, I just don't 3 know. 4 Q. Again, you don't know if Mr. Moskowitz's 5 investigation was self-assigned, meaning he chose to do 6 it himself, or whether it was assigned by Mr. Tucker; is 7 that fair? 8 A. I somewhat object to the phrase he decided to 9 do it on his own. Again, he -- complaints sit in a tank 10 until they're assigned and he could just, you know, look 11 and say "oh, I've this issue here, it's on my way home, 12 I'll grab it," as opposed to Matt going, "Jacob, there 13 is this case here, go look at it." He would have 14 discretion to do that. 15 Q. I understand there are two ways that 16 Mr. Moskowitz can undertake an investigation. Either 17 it's been self-assigned, meaning it was he himself 18 writes the books at the pool and decides to do it or it 19 can be assigned by Mr. Tucker; is that not correct? 20 MS. ZYLSTRA: Object to form. You can answer. 21 A. Yes. I'll give another example. Somebody is 22 complaining that they are doing automotive repair in a 23 residential lot. He's taking the information from the 24 complainant. He's entering into it. He could just 25 assign that case to him because he has firsthand</p>

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1 knowledge of it and go and do it.
 2 I just -- I want to be careful to not assume
 3 who assigned it to Jacob, to it. Did he assign it to
 4 himself because he saw it there, or did Matt or somebody
 5 else assign it to him?
 6 Q. Who are the people that can assign
 7 Mr. Moskowitz to do an investigation?
 8 A. Matt, Jacob could do it himself, I could do
 9 it.
 10 Q. Anybody else?
 11 A. Generally, they wouldn't. "Assign" is a bad
 12 word. "Jacob, it's here, can you go look at it," you
 13 know. Jenny, the other assistant zoning administrator,
 14 she could say "Would you go look at it?" Is she really
 15 assigning it to him? No.
 16 But generally you can self-assign an employee
 17 because it's in their area or their expertise, or if
 18 it's going to be assigned it might be through Matt or
 19 myself.
 20 Q. Does Mr. Moskowitz have any sort of expertise
 21 that would have made him the appropriate person to
 22 investigate this?
 23 A. No. Again, I was just speaking in broader
 24 terms.
 25 Q. Sure. So you don't know the particulars of

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1 how Mr. Moskowitz came to be the one investigating these
 2 complaints?
 3 A. No.
 4 Q. Mr. Moskowitz does his investigation. Does
 5 anyone have review or approval over his investigation
 6 before a citation or official notice is issued?
 7 MS. ZYLSTRA: Objection. Form, foundation.
 8 You can answer.
 9 A. Generally, no.
 10 Q. So Mr. Moskowitz is empowered individually to
 11 issue a citation or official notice after he's satisfied
 12 with his investigation?
 13 MS. ZYLSTRA: Same objection.
 14 A. If he is comfortable with it, yeah.
 15 Q. In this particular case for Exhibit 9, did
 16 Mr. Moskowitz confer or consult with anyone else in your
 17 department before this notice was issued?
 18 A. Not with me.
 19 Q. Do you know if he consulted with anybody else?
 20 A. I can't give a definitive answer. I don't
 21 know.
 22 Q. Do you know if he conferred with anyone
 23 outside of your department before issuing this official
 24 notice?
 25 A. Conferred, I would hope not.

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1 Q. You don't have any knowledge of him speaking
 2 with anyone else other than the complainant?
 3 MS. ZYLSTRA: Object to form. You can answer.
 4 A. Conferred, I read that -- or I'm hearing that
 5 and thinking getting input from somebody.
 6 We should not be issuing a notice based on
 7 input from private citizens. You know, if a private
 8 citizen had been calling and complaining that he should
 9 base his opinion based on the law and not what the
 10 private citizen is complaining about.
 11 Q. Mr. Moskowitz has the authority to issue
 12 either a citation or an official notice for what he
 13 observed in Exhibit 9; is that correct?
 14 A. Yes.
 15 Q. And what factors do your inspectors, do your
 16 code enforcement officers utilize in deciding whether to
 17 issue a citation or an official notice?
 18 A. If, like an example, he went there on the 27th
 19 and witnessed the game and the master plan is not
 20 allowing for it, he would be, I would say, fairly much
 21 compelled to write an official notice telling him to
 22 stop.
 23 Q. But why not a citation?
 24 A. Again, we almost exclusively start enforcement
 25 actions with an official notice.

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1 Q. So Edgewood is being notified in Exhibit 9 to
 2 discontinue holding athletic contests on the athletic
 3 field; correct?
 4 A. Uh-huh.
 5 Q. And is "athletic contest" defined anywhere, to
 6 your knowledge, in the Madison municipal code or the
 7 zoning ordinances?
 8 A. Not that I'm aware of.
 9 Q. Can you define an athletic contest?
 10 A. Well, my layman's interpretation is a
 11 competition between two teams. I would just say
 12 competition between two teams.
 13 Q. Based on your definition, would Edgewood be
 14 allowed to host a math Olympics competition between West
 15 and Edgewood on its field?
 16 MS. ZYLSTRA: Objection. Form, foundation,
 17 incomplete hypothetical. You can answer.
 18 Q. That's a competition between two teams;
 19 correct?
 20 MS. ZYLSTRA: Same objections.
 21 A. My first reaction is I doubt that we would
 22 consider it because it's not an athletic competition.
 23 Q. What does "athletic" mean?
 24 MS. ZYLSTRA: Same objections. You can
 25 answer.

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1 A. One of the what I would say is the proscribed
2 sports.
3 Q. Proscribed sports. Can you give me examples
4 of --
5 A. No.
6 Q. I struggle with it, too, but I'm not the one
7 who issued a complaint talking about athletic contests,
8 so I need to understand what the City's position is on
9 how to define athletic contests.
10 So what is a proscribed sport?
11 MS. ZYLSTRA: Same objections. You can
12 answer.
13 A. I knew as soon as those words came out I was
14 going to regret it.
15 I'm thinking, you know, soccer, track, field
16 hockey. To be honest, I don't know enough about
17 Ultimate Frisbee to say whether or not it's one or not.
18 Something like that.
19 Baseball, softball, I would consider those
20 athletic competitions. A math meet? I don't think so.
21 Q. Do you know how Jacob determined on March 27
22 that an athletic competition was occurring on that
23 field?
24 MS. ZYLSTRA: Objection. Form.
25 A. It's my understanding he went there and saw

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1 two teams playing soccer with, you know, officials and
2 it was a competition.
3 Q. Do you know any more details about what caused
4 him to conclude it was a competition, it was a game as
5 opposed to a scrimmage as we talked about before that
6 was more akin to a practice?
7 A. I don't know, no.
8 Q. When you were taking Phys Ed at Edgewood, were
9 there ever any classes in which you and your classmates
10 were engaged in athletic competitions within the context
11 of the Phy Ed class?
12 MS. ZYLSTRA: Objection. Form and foundation.
13 You can answer.
14 A. Sure.
15 Q. Under your reading of the master plan, would
16 that have been permitted or not permitted?
17 MS. ZYLSTRA: Same objections.
18 A. Under my reading of it, they would have been
19 allowed because it was a physical education class where
20 they were, let's say, playing touch football or
21 something of that nature.
22 Q. So the only things the field, as you
23 understood it, could be used for were team practices and
24 physical education classes, correct, any other use was
25 prohibited?

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1 A. I am reluctant to say any other use is
2 prohibited.
3 Q. Exhibit 9 says, "The Campus Master Plan states
4 that the athletic field is used for team practices and
5 physical education classes."
6 Is it the City's position that any other use
7 that is not a team practice or physical education
8 violate -- or physical education class violated the
9 master plan during the period it was in effect?
10 MS. ZYLSTRA: Objection. Form, foundation.
11 A. I find it hard to believe that we would object
12 if they were having an outdoor Mass on the field.
13 Q. Even though that's not a permitted use under
14 the master plan pages that we saw?
15 A. Correct.
16 Q. What about nonphysical education classes.
17 What if a physics teacher decides she wants to go out on
18 the field and use the field for an experiment during the
19 day. It's a class, but it's not a physical education
20 class. Is that a violation of the master plan?
21 MS. ZYLSTRA: Objection. Form, foundation.
22 A. Again, I would -- I would struggle with, say,
23 the physics class being out there and launching balloons
24 and taking readings and seeing how wind currents are
25 affecting them and argue that that would be prohibited.

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1 Q. So even though the Campus Master Plan says
2 uses are going to be for team practices and physical
3 education classes, you would not issue a citation and
4 give a pass to the use of the field for other types of
5 educational classes?
6 MS. ZYLSTRA: Objection. Form, foundation.
7 You can respond.
8 A. As much as we appear unreasonable at times, I
9 think we look at things individually and make a decision
10 based on what we believe would be appropriate.
11 Q. Okay.
12 A. You know, a class, they're doing something in
13 the middle of the afternoon during, you know, school
14 days as opposed to, you know, something happening on
15 Friday night at 8:00 o'clock at night.
16 Q. So in your view, an appropriate deviation from
17 the terms of the master plan wouldn't result in a
18 citation from your office; is that correct?
19 MS. ZYLSTRA: Same objections.
20 A. The phrase that we use sometimes is "beneath
21 our notice." Some things that occur are beneath our
22 notice.
23 Q. What does that mean?
24 A. I'm trying to think of what is a really good
25 example of beneath our notice.

<p style="text-align: right;">Page 118</p> <p>1 Something that maybe rise -- something that is</p> <p>2 a purely technical violation, but the impact on</p> <p>3 neighbors, the community, and that nobody would ever</p> <p>4 even observe that it's going on because it's so</p> <p>5 minuscule, you know, that is why I would use "beneath</p> <p>6 our notice."</p> <p>7 Q. Sure. In your estimation, it's minor, it's a</p> <p>8 minor deviation from what's in the master plan; is that</p> <p>9 fair?</p> <p>10 A. Correct.</p> <p>11 Q. Would a pep rally during this period of time</p> <p>12 be beneath your notice?</p> <p>13 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>14 Q. Would it comply with the exact terms of the</p> <p>15 master plan, is that sufficiently minor to be beneath</p> <p>16 your notice?</p> <p>17 A. Good question. I would like to have looked at</p> <p>18 it in whole, you know, not just say, yeah, pep rally,</p> <p>19 no. If they have 5,000 people there, it may be</p> <p>20 something to consider.</p> <p>21 So I hesitate giving black and white answers</p> <p>22 because there is -- there are discretions. You know,</p> <p>23 you're driving down Monroe Street at 31 miles an hour --</p> <p>24 I guess now it's 25. You're driving at 26, are you</p> <p>25 going to get a ticket for it? Of course not. They are</p>	<p style="text-align: right;">Page 120</p> <p>1 A. I wouldn't want to touch that one with a</p> <p>2 10-foot pole.</p> <p>3 Q. How about a prayer vigil, students gathering</p> <p>4 on the field?</p> <p>5 MS. ZYLSTRA: Same objection. You can answer.</p> <p>6 A. I wouldn't want to touch that one with a</p> <p>7 10-foot pole.</p> <p>8 Q. What about a walk or a run around the track</p> <p>9 for charity; is that something that would be beneath</p> <p>10 your notice?</p> <p>11 MS. ZYLSTRA: Same objections.</p> <p>12 A. That's interesting. I think in the master</p> <p>13 plan it talks about actually -- at least I thought there</p> <p>14 was something in the master plan about the track being</p> <p>15 used by the neighborhood so people could use it and go</p> <p>16 run and stuff like that.</p> <p>17 Is that much different? I'm not really sure.</p> <p>18 Now, again, if all of a sudden there is 10,000 people</p> <p>19 swarming around the place, then it might become an</p> <p>20 issue.</p> <p>21 Q. So big events, from what I'm hearing you say,</p> <p>22 you know, that totality of circumstances, big events</p> <p>23 with big pep rallies, big graduation, that could really</p> <p>24 tip the scales for you.</p> <p>25 With respect to team practice, is there any</p>
<p style="text-align: right;">Page 119</p> <p>1 not about to do that.</p> <p>2 But it gets to a certain level where, yes, you</p> <p>3 will take enforcement action.</p> <p>4 Q. Sure. So in your view do you have discretion</p> <p>5 to label a graduation ceremony as being beneath your</p> <p>6 notice?</p> <p>7 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>8 A. I would think that would be something that we</p> <p>9 would look at in whole and say, you know, it's an</p> <p>10 hour-long event. The school orchestra that comes there</p> <p>11 and plays for, you know, the Edgewood fight song, at the</p> <p>12 beginning with the national anthem, they hand out</p> <p>13 diplomas and they leave, is that a one-day event, once a</p> <p>14 year, is that beneath our notice? Possibly. You know,</p> <p>15 look at it as a whole.</p> <p>16 Q. So you're looking at the totality of the</p> <p>17 circumstance; is that fair?</p> <p>18 A. Yes.</p> <p>19 Q. I think you already said, though, that like</p> <p>20 campus liturgy, if Edgewood posted one on its field that</p> <p>21 that's not something that you would issue a violation</p> <p>22 for; is that right?</p> <p>23 A. I wouldn't want to -- I'm sorry.</p> <p>24 MS. ZYLSTRA: I'm sorry. Form, foundation.</p> <p>25 You can answer.</p>	<p style="text-align: right;">Page 121</p> <p>1 limitation on the number of students who could</p> <p>2 participate in a team practice before it would somehow</p> <p>3 and all of a sudden it would be a problem?</p> <p>4 A. I would say no.</p> <p>5 Q. So some football teams can have a hundred</p> <p>6 players on them, probably not at Edgewood, but there</p> <p>7 wouldn't be a problem with having a hundred kids on a</p> <p>8 football field at Edgewood under the terms of its master</p> <p>9 plan?</p> <p>10 MS. ZYLSTRA: Object to form. You can answer.</p> <p>11 A. I would say no.</p> <p>12 Q. The old days, Edgefest. Edgefest is a</p> <p>13 historical use that they had used on that field for a</p> <p>14 long time.</p> <p>15 Would Edgefest be permitted under the master</p> <p>16 plan or would you issue a violation on that?</p> <p>17 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>18 A. I -- my limited knowledge of the master plan,</p> <p>19 I really don't feel qualified to answer that. That may</p> <p>20 be a good question for Matt on Friday.</p> <p>21 Q. There are bleachers on the Edgewood athletic</p> <p>22 field; correct?</p> <p>23 A. I believe so.</p> <p>24 Q. And is there any limitation on the number of</p> <p>25 people that could come and watch a practice or a</p>

<p style="text-align: right;">Page 122</p> <p>1 scrimmage under the master plan?</p> <p>2 A. Not that I'm aware of, no.</p> <p>3 Q. If there was a complaint about the number of</p> <p>4 people coming to a practice and watching or traffic</p> <p>5 related to a practice or a scrimmage, is that something</p> <p>6 that you would consider for a violation?</p> <p>7 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>8 You can answer.</p> <p>9 A. I would say no.</p> <p>10 (Exhibit 10 marked)</p> <p>11 Q. MS. INGRISANO: I'm handing you what's been</p> <p>12 marked as Exhibit 10, Mr. Hank.</p> <p>13 Have you ever seen the newsletter from the</p> <p>14 Dudgeon-Monroe Neighborhood Association?</p> <p>15 A. Nope.</p> <p>16 Q. Have you ever seen this document before?</p> <p>17 A. Nope.</p> <p>18 Q. I'm going to ask you to take a look at the</p> <p>19 first section of this first page of Exhibit 10.</p> <p>20 This email is dated -- looks like a newsletter</p> <p>21 from dnmanews@dmna.org to Tag Evers and maybe others,</p> <p>22 dated September 13, 2021. Do you see that?</p> <p>23 A. Uh-huh.</p> <p>24 Q. I'm sorry?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. Again, if that had occurred during the course</p> <p>2 of the master plan being in effect you had said that you</p> <p>3 would not issue a citation on that; correct?</p> <p>4 A. Certainly not, no.</p> <p>5 Q. Even though it's technically not permitted by</p> <p>6 the terms of the master plan, right?</p> <p>7 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>8 You can answer.</p> <p>9 A. Again, we're on -- out of the master plan,</p> <p>10 we're in the --</p> <p>11 Q. I'm asking you to extrapolate that these -- if</p> <p>12 these events occurred during the term -- so this is</p> <p>13 actually how Edgewood is using the field now; correct?</p> <p>14 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>15 A. Yes, they were, yeah.</p> <p>16 Q. At least in September 2021, assuming the</p> <p>17 Dudgeon-Monroe Neighborhood Association is correct on</p> <p>18 this.</p> <p>19 So if these uses of the field in 2021 had</p> <p>20 occurred in 2018 or in the first half of 2019, you would</p> <p>21 agree that the outdoor liturgy doesn't technically fall</p> <p>22 into the terms of the permissible uses in the master</p> <p>23 plan, but you still wouldn't issue a citation; correct?</p> <p>24 A. Certainly not.</p> <p>25 Q. A pep rally, again, we're seeing the field is</p>
<p style="text-align: right;">Page 123</p> <p>1 Q. Thank you. And so September 13, 2021 is after</p> <p>2 the repeal of the master plan. Do you have knowledge of</p> <p>3 that?</p> <p>4 A. I believe that is correct, yes.</p> <p>5 Q. So this newsletter purports to identify weekly</p> <p>6 homecoming activities in September of 2021 that's going</p> <p>7 to be taking place on the Edgewood High School campus.</p> <p>8 Do you see that?</p> <p>9 A. Uh-huh.</p> <p>10 Q. So the first thing you notice is annual powder</p> <p>11 puff football game; correct?</p> <p>12 A. Yes.</p> <p>13 Q. Do you have an understanding of what powder</p> <p>14 puff football is?</p> <p>15 A. I believe it's the female students playing a</p> <p>16 game.</p> <p>17 Q. Is the powder puff football game, in your</p> <p>18 understanding, would that be an athletic competition?</p> <p>19 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>20 A. I'm thinking back to when I was there. It</p> <p>21 would be hard to really construe that as a game, but I</p> <p>22 think that was the intent, yes.</p> <p>23 Q. Next it lists an outdoor liturgy, on field,</p> <p>24 with speakers. Do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 125</p> <p>1 actually being used for pep rallies.</p> <p>2 If this had occurred back in 2018, early 2019,</p> <p>3 it may or may not cause you to issue a citation; is that</p> <p>4 right?</p> <p>5 MS. ZYLSTRA: Objection to form, asked and</p> <p>6 answered. You can answer.</p> <p>7 A. Again, I would not issue -- I would maybe have</p> <p>8 somebody look at it, go see what's going on, and if it's</p> <p>9 what I'm thinking maybe when I was there, you know,</p> <p>10 probably falling beneath our notice because they</p> <p>11 wouldn't get that many people there. Maybe I'm wrong.</p> <p>12 Q. When a neighbor or a concerned citizen makes a</p> <p>13 complaint and it's a technical violation of the code or</p> <p>14 of a -- here, for example, a master plan, but it falls</p> <p>15 beneath your notice, how do you communicate that to the</p> <p>16 neighbor?</p> <p>17 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>18 You can answer.</p> <p>19 A. If they followed up with us and asked what we</p> <p>20 did with the complaint, we would explain what we did or</p> <p>21 what we did not do and why.</p> <p>22 Q. Do you agree with me that there might be some</p> <p>23 directors of the building inspection department that</p> <p>24 might take a different view of what falls beneath their</p> <p>25 notice than you have?</p>

<p style="text-align: right;">Page 126</p> <p>1 MS. ZYLSTRA: Objection. Form, foundation. 2 A. Sure, of course. 3 Q. So while you wouldn't touch a campus liturgy 4 with a 10-foot pole, to use your words, a different 5 building inspector director might say, hey, not in the 6 terms of the Campus Master Plan, not permitted; correct? 7 MS. ZYLSTRA: Objection. Form, foundation. 8 A. For an outdoor liturgy I would hope nobody 9 would touch that. 10 Q. That's not in the Campus Master Plan, it's a 11 technical violation. You're allowed to issue citations 12 for technical violations; correct? 13 MS. ZYLSTRA: Objection. Form, foundation. 14 A. Yes. 15 Q. During the time when the master plan was in 16 effect, in that dead part of the summer, in the early 17 part of the summer where there are no classes and 18 football hasn't started up yet and there are no 19 sanctioned school sports, isn't it fair to say that 20 under your reading of the master plan there was no 21 permissible use of that field during that period of 22 time? 23 MS. ZYLSTRA: Objection. Form, foundation. 24 Q. There are no physical education classes to be 25 had, there are no team practices to be, Edgewood has no</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. What I'm asking you is, you have stated today 2 that there is a distinction between what is a technical 3 violation of the master plan and a violation of the 4 master plan that you're prepared to take action on; is 5 that right? 6 MS. ZYLSTRA: Same objections. 7 A. Yes, everything we do has a modicum of 8 discretion. 9 Q. Is Edgewood required -- during the terms of 10 the master plan when this interpretation was in place, 11 is Edgewood required to prohibit students from 12 recreating on a field if it wasn't part of a team 13 practice or a Phys Ed class? 14 MS. ZYLSTRA: Same objections. 15 A. I'm going to say look at it in the -- of what 16 they are actually doing. If it's a small number of 17 people out there throwing a frisbee around, of course 18 not. 19 If all of a sudden half the school body is 20 there doing something, playing some type of event with 21 music and whatever, that's something that we would at 22 least have to look at and investigate to see whether or 23 not it rises to the level of where we would commence 24 enforcement. 25 Q. Looking back to Exhibit 9, the date issued on</p>
<p style="text-align: right;">Page 127</p> <p>1 valid use for that field under the master plan? 2 MS. ZYLSTRA: Same objections. 3 A. Again, I'll go back. I thought that in the 4 master plan it stated that the neighborhood could use 5 the field. 6 Q. So neighborhood use, team practices, and 7 physical education classes are the only permitted uses 8 under the master plan. Is that right? 9 MS. ZYLSTRA: Wait -- 10 Q. Is that your understanding? 11 MS. ZYLSTRA: Objection. Form, foundation. 12 You can answer. 13 A. So if somebody called up and said there's 14 eight neighborhood kids out there playing soccer, are we 15 going to spend our time to go look at that? No. 16 Q. But there is a distinction what your saying, 17 though, right, there is a distinction between what's 18 permitted in the master plan and what's a technical 19 violation versus what kind of violation you're actually 20 going to take action on; isn't that right? 21 MS. ZYLSTRA: Same objections. 22 A. Again, I'll go back to somebody alleges 23 something that would be a violation, we would tend to go 24 look at it and see if it rises to the level where we're 25 issuing an official notice.</p>	<p style="text-align: right;">Page 129</p> <p>1 this official notice was April 1, 2019. Do you see 2 that? 3 A. Yes. 4 Q. And the correction -- the violation shall be 5 corrected on or before April 2, 2019; is that right? 6 A. That is correct. 7 Q. So it was basically an official notice to 8 immediately cease holding athletic contests on the 9 field; correct? 10 A. That's correct. 11 Q. And to your knowledge, Edgewood did not cease 12 immediately holding athletic contests on the field; is 13 that right? 14 A. That is correct. 15 (Exhibit 11 marked) 16 MS. ZYLSTRA: George, I don't know how long 17 you want to go today. I don't know whether you need 18 lunch or not. 19 (Discussion off the record) 20 (Recess) 21 BY MR. INGRISANO: 22 Q. Mr. Hank, I think that when we left I had just 23 put Exhibit 11 in front of you; correct? 24 A. Yes. 25 Q. You recognize that, sir, as a second official</p>

<p style="text-align: right;">Page 130</p> <p>1 notice issued by the City of Madison related to the use 2 of the Edgewood athletic field; is that right? 3 A. That's correct. 4 Q. This one, again, was issued by Jacob Moskowitz 5 of your office? 6 A. Uh-huh. 7 Q. I'm sorry, is that a yes? 8 A. Yes, it is. 9 Q. And the beginning of this document under 10 "Complaint," it identifies one, two, three, four, five, 11 six -- seven dates that your office observed athletic 12 contests taking place on the field -- on the athletic 13 field taking place at 2219 Monroe Street. Do you see 14 that? 15 A. Yes, I do. 16 Q. In fact, five of those seven dates occurred 17 after the date of your first notice at Exhibit 9; 18 correct? 19 MS. ZYLSTRA: Let me try to find it. 20 THE WITNESS: Actually, I was looking for 21 Exhibit 9. 22 MS. ZYLSTRA: Here's my copy if you want it. 23 A. I was curious. Yeah, it's basically an 24 amended official notice. Yes. 25 Q. There it is.</p>	<p style="text-align: right;">Page 132</p> <p>1 me, citations or whatever, tickets. 2 Q. So did you confer with Mr. Moskowitz about a 3 potential for appeal before he issued the official 4 notice? 5 A. I did not. 6 Q. Do you know if someone else in your office 7 did, about whether to issue a citation in light of the 8 anticipated appeal? 9 A. No, I -- I am not aware that somebody -- I'll 10 phrase it this way: 11 This is different than normal as opposed to 12 sending out another official notice, an amended official 13 notice. If it was me, I would have just said go there 14 on 3/29, 4/2, 4/16, all those dates, and just enter your 15 inspection notes in your case so that you have 16 observations on those dates. 17 I don't -- I think this really, from my 18 perspective, adds very little to what I think our case 19 is, but his inspection notes to me, when he gets to 20 court, would be applicable as opposed to I think this is 21 superul -- superful -- 22 Q. Superfluous? 23 A. Yes. 24 Q. But typically if an official notice is issued 25 and not complied with, would it not be your typical</p>
<p style="text-align: right;">Page 131</p> <p>1 A. Yeah, there it is. I was going to see if it 2 was the same case number and it is. 3 Q. So it's technically viewed as the same case? 4 A. Yes. 5 Q. To your knowledge, did anyone work with or 6 confer with Mr. Moskowitz in your office about this 7 second official notice, Exhibit 11, in light of the fact 8 that an earlier notice had been issued at Exhibit 9? 9 A. Not that I'm aware of. 10 Q. To your knowledge was this, in your words, 11 self-assigned or assigned by someone within your office? 12 MS. ZYLSTRA: Objection. Form. 13 A. It is a continuation of the same case. So it 14 would have stayed with Inspector Moskowitz. 15 Q. Very good. Thank you. 16 Given that the complained of activity 17 continued from Exhibit 9 to Exhibit 11, do you have any 18 understanding as to why a citation was not issued 19 instead of a second official notice? 20 A. To the best of my memory, I believe they were 21 -- they expressed their opinion that they were going to 22 appeal it, and generally when somebody is going to 23 appeal one of our actions we put enforcement on hold. 24 We may go and still observe and see what's 25 going on, but we will not issue an official -- excuse</p>	<p style="text-align: right;">Page 133</p> <p>1 expectation that a citation would be forthcoming next? 2 MS. ZYLSTRA: Objection. Form, foundation. 3 You can answer. 4 A. If there was -- if there was expressed -- if 5 the violator expressed their willingness and their 6 desire to comply and it was just going to be a matter of 7 a few days, that's fine, or if they express their desire 8 that they were going to appeal it to the zoning board. 9 They were challenging whether or not this was 10 a proper notice and they wanted to go to the zoning 11 board of appeals to challenge what would have been 12 Matt's interpretation of this. 13 Q. Sure. Why would an attempt to appeal be 14 relevant to the decision whether to file a citation or 15 subsequent official notice? 16 MS. ZYLSTRA: Objection. Form. You can 17 answer. 18 A. We can always issue the citation, I believe, 19 up to eight months later, I think. So 18 months later 20 Jacob could have sat there and issued a ticket for each 21 one of these days and sent them all at once. Could have 22 done that. 23 But when we have somebody that has said I want 24 to appeal this to ZBA, then pretty much we're going to 25 put our enforcement action on hold to see what the</p>

<p style="text-align: right;">Page 134</p> <p>1 outcome is. Because if we send tickets and then all of</p> <p>2 a sudden ZBA agrees with the violator that, no, you</p> <p>3 shouldn't have done that, then we've got tickets that</p> <p>4 are hanging out there that we are asking to be</p> <p>5 dismissed.</p> <p>6 Q. And so it's the idea of not wanting to have to</p> <p>7 dismiss an actual citation that's the sole reason that</p> <p>8 you would defer a citation instead of issuing a second</p> <p>9 official notice; is that right?</p> <p>10 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>11 You can answer.</p> <p>12 A. Again, I did not see the need to issue a</p> <p>13 second notice. I think this was to augment the document</p> <p>14 -- the documentation in the case to say, oh, by the way</p> <p>15 Edgewood, we observed these things on this date.</p> <p>16 So I think that's probably why they did this.</p> <p>17 But, again, if we get somebody who says "I want to</p> <p>18 appeal your interpretation of this," we typically do not</p> <p>19 go on with prosecution at that point.</p> <p>20 Q. When you said this is why "they" did this,</p> <p>21 again, Jacob Moskowitz, anyone else who was involved</p> <p>22 with this citation, Exhibit 11, who would that have</p> <p>23 been?</p> <p>24 You used the plural "they" as to why they did</p> <p>25 this in reference to Exhibit 11. Who is they?</p>	<p style="text-align: right;">Page 136</p> <p>1 trying to prevent in issuing these notices?</p> <p>2 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>3 Q. Can you identify them?</p> <p>4 MS. ZYLSTRA: Apologize, Counsel. Same</p> <p>5 objection.</p> <p>6 A. What harms?</p> <p>7 Q. Yeah.</p> <p>8 A. Well, we had received complaints that they</p> <p>9 were holding athletic competitions on the field. If</p> <p>10 those complaints were accurate, it would be our -- it</p> <p>11 would be our interpretation that they would be a</p> <p>12 violation of the master plan. So it was prudent for us</p> <p>13 to go and look at it and see if the allegation was</p> <p>14 accurate.</p> <p>15 Q. The deviation from the master plan to host</p> <p>16 games resulted in a harm that you would want to use your</p> <p>17 enforcement authority to prevent; is that fair?</p> <p>18 MS. ZYLSTRA: Objection. Form.</p> <p>19 A. I struggle with the word "harm." Again, I'll</p> <p>20 just go back. We have a complaint alleging that</p> <p>21 something is going on that we believe, if accurate,</p> <p>22 would be against the master plan.</p> <p>23 Q. Sure. Let me phrase it differently then.</p> <p>24 What's the interest the City has in enforcing</p> <p>25 the master plan provisions to prevent games? I mean,</p>
<p style="text-align: right;">Page 135</p> <p>1 A. Good question for Matt on Friday. I --</p> <p>2 looking at this, it's not standard, so I don't know if</p> <p>3 this was discussions with Matt and legal counsel.</p> <p>4 Q. So there was some amount of analysis and</p> <p>5 discussion behind the scenes of Exhibit 11 that you're</p> <p>6 not aware of that resulted in what you would call a</p> <p>7 deviation from typical practice; is that right?</p> <p>8 MS. ZYLSTRA: Objection. Form, foundation,</p> <p>9 misstates testimony. You can answer.</p> <p>10 A. We like to be creatures of habit and do things</p> <p>11 the same every time. Consistency keeps us in a really</p> <p>12 good spot. Like I say, when I see this, I view it as</p> <p>13 enhancing the record for the defendant.</p> <p>14 Q. Sure. But what I'm asking you is, when you</p> <p>15 talked about the decision-makers and the analysis that</p> <p>16 went into issuing the Exhibit 11, you don't have any</p> <p>17 details, but you are aware that there was at least one</p> <p>18 other person working with Mr. Moskowitz in making the</p> <p>19 determination as to how to proceed with the continued</p> <p>20 violation of the master plan; is that right?</p> <p>21 MS. ZYLSTRA: Objection. Form. You can</p> <p>22 answer.</p> <p>23 A. Based on this document, I would say yes.</p> <p>24 Q. In looking at Exhibits 9 and 11, Mr. Hank, do</p> <p>25 you have an understanding of what harms your office was</p>	<p style="text-align: right;">Page 137</p> <p>1 what's the big deal?</p> <p>2 MS. ZYLSTRA: Objection. Form.</p> <p>3 A. It's a document that Edgewood helped draft and</p> <p>4 agreed to. So having them abide to the document I think</p> <p>5 is in the benefit of everybody.</p> <p>6 Q. So general compliance with an agreed document,</p> <p>7 the City's interest in enforcing the master plan is</p> <p>8 because it wants to enforce its agreement that it has</p> <p>9 with its Campus-Institutional zone district that do</p> <p>10 master plans; is that right?</p> <p>11 MS. ZYLSTRA: Objection. Form.</p> <p>12 A. Yes.</p> <p>13 Q. Anything else that you can think of what --</p> <p>14 any other interest that you can think of in the City</p> <p>15 prohibiting athletic contests on these athletic fields?</p> <p>16 MS. ZYLSTRA: Objection. Form.</p> <p>17 A. Not that -- not that I'm aware of, not to play</p> <p>18 any bearing on this action.</p> <p>19 Q. In your more than 30 years in the building</p> <p>20 inspection department -- I think you said 35, right?</p> <p>21 A. Almost.</p> <p>22 Q. Almost 35. Were you aware of any other</p> <p>23 instances in which a property owner was issued a notice</p> <p>24 or citation for having athletic contests on an athletic</p> <p>25 field?</p>

<p style="text-align: right;">Page 138</p> <p>1 A. No.</p> <p>2 Q. If a citation had issued with respect to the</p> <p>3 violations of the master plan the City was contending,</p> <p>4 do you know what fines and penalties Edgewood would face</p> <p>5 or could have faced?</p> <p>6 MS. ZYLSTRA: Objection. Form.</p> <p>7 A. Unless explicitly enumerated in the ordinance,</p> <p>8 I believe the first one is like \$298, something like</p> <p>9 that, ballpark.</p> <p>10 Q. Per violation?</p> <p>11 A. Per violation per day for a citation.</p> <p>12 Q. Was it your understanding that without a</p> <p>13 master plan and just under the Campus-Institutional</p> <p>14 District zoning provisions that Edgewood would have been</p> <p>15 able to hold athletic contests on its field?</p> <p>16 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>17 You can answer.</p> <p>18 A. I'm sorry, can you run that by again?</p> <p>19 Q. Sure. In the absence of a master plan, that</p> <p>20 restricted athletic contests, right?</p> <p>21 A. Okay.</p> <p>22 Q. Which is what the City has contended here, and</p> <p>23 if without a master plan -- strike that.</p> <p>24 Without a master plan, the</p> <p>25 Campus-Institutional District is governed by the</p>	<p style="text-align: right;">Page 140</p> <p>1 plans that would comply with his reveal.</p> <p>2 Q. Got it. Looking at Exhibit 3 where it says,</p> <p>3 Status, colon, Closed. What does that mean?</p> <p>4 MS. ZYLSTRA: Object to form, asked and</p> <p>5 answered. You can answer.</p> <p>6 A. It means that the reviewing agencies have</p> <p>7 completed their work and that it was believed at the</p> <p>8 time it was in compliance with everything that was</p> <p>9 submitted was in compliance, not that everything was</p> <p>10 done in compliance.</p> <p>11 Q. Where it says "Project Type: Permitted Use</p> <p>12 Site Plan Reviews," do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Were there other types of project types that</p> <p>15 could be populated in that field?</p> <p>16 A. Yes, there is. And, again, I would say that</p> <p>17 would be a great question for Matt.</p> <p>18 Q. Got it. So you don't know what permitted use</p> <p>19 site plan review means as opposed to other --</p> <p>20 A. Well --</p> <p>21 Q. Well, let me ask you this: What does</p> <p>22 permitted use site plan review mean to you?</p> <p>23 A. Well, it's a permitted use and it's a site</p> <p>24 plan review, I assume -- and this could be dangerous --</p> <p>25 that there is a conditional use site plan review.</p>
<p style="text-align: right;">Page 139</p> <p>1 Campus-Institutional zoning ordinances; correct?</p> <p>2 A. I believe that's correct, yes.</p> <p>3 Q. So without a master plan, would -- under the</p> <p>4 Campus-Institutional zoning district ordinances, would</p> <p>5 Edgewood had been allowed to use its athletic field to</p> <p>6 host games in that circumstance?</p> <p>7 MS. ZYLSTRA: Object to form. You can answer.</p> <p>8 A. Not being an expert in, like, what the</p> <p>9 Campus-Institutional District allows and does not allow</p> <p>10 or what's a conditional use, I would just be hazarding a</p> <p>11 guess. Sorry.</p> <p>12 Q. Do you know how long a master plan is good</p> <p>13 for; how long it's in place?</p> <p>14 MS. ZYLSTRA: Object to form.</p> <p>15 A. No, I do not. I believe there is an</p> <p>16 expiration date written in them.</p> <p>17 Q. Okay. Looking back at Exhibit 3, if Steve</p> <p>18 Rewey had found the lighting application that Edgewood</p> <p>19 submitted to be noncompliant, he would have issued some</p> <p>20 sort of notice of noncompliance to Edgewood; correct?</p> <p>21 MS. ZYLSTRA: Object to form, foundation. You</p> <p>22 can answer.</p> <p>23 A. Not a notice of noncompliance. He would have</p> <p>24 issued a plan withhold letter that would outline what</p> <p>25 was wrong so that they could make corrections and submit</p>	<p style="text-align: right;">Page 141</p> <p>1 So there might be others, but --</p> <p>2 Q. And I believe you said Steve Rewey, to your</p> <p>3 knowledge, would have been the one who would be filling</p> <p>4 in these fields; is that right?</p> <p>5 A. No, no, no, no.</p> <p>6 MS. ZYLSTRA: Object --</p> <p>7 THE WITNESS: Sorry.</p> <p>8 MS. ZYLSTRA: That's okay. Go ahead.</p> <p>9 Q. Who would fill in the permitted use site plan</p> <p>10 review on this document?</p> <p>11 A. Probably Christy. The only thing that Steve</p> <p>12 is filling in is under his review where he's putting</p> <p>13 "Approved" and the date.</p> <p>14 Q. Got it. Appreciate that. Looking at Exhibit</p> <p>15 2, the Memorial electrical permit.</p> <p>16 As you sit here today, do you know of any</p> <p>17 inquiries into Memorial's intended use surrounding this</p> <p>18 electrical permit?</p> <p>19 A. No. I'll add, again, this was an existing lit</p> <p>20 field that they were redoing the lighting, so there</p> <p>21 really is no change in use or intensity. Probably</p> <p>22 installing more efficient lighting is what this was</p> <p>23 about.</p> <p>24 Q. Well, but in exhibit -- where is that? My</p> <p>25 apologies. Oh, there it is. Exhibit 6.</p>

<p style="text-align: right;">Page 142</p> <p>1 A. Yes.</p> <p>2 Q. In Exhibit 6, Mr. Tucker went outside of the</p> <p>3 lighting application submitted by Edgewood to determine</p> <p>4 that the permitted -- determine that the intended use</p> <p>5 was different than what he believed was allowed;</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. It's based on the information the City --</p> <p>9 strike that.</p> <p>10 He said, "However, over the past weekend, I</p> <p>11 received a copy of the letter sent to Edgewood</p> <p>12 Family...relating to the institutions' present interest</p> <p>13 to install lights."</p> <p>14 So there he didn't look at just the four</p> <p>15 corners of the lighting application, he was relying on</p> <p>16 other information that had been brought to his attention</p> <p>17 to decide what the intended use for those lights was,</p> <p>18 right?</p> <p>19 A. Correct. And I believe it was the Edgewood</p> <p>20 High School newsletter.</p> <p>21 Q. And you're not aware of any attempt by your</p> <p>22 department to look outside of the four corners of the</p> <p>23 materials submitted by Memorial related to Exhibit 2;</p> <p>24 correct?</p> <p>25 A. Not that I'm aware of.</p>	<p style="text-align: right;">Page 144</p> <p>1 A. Again, not that I'm aware of.</p> <p>2 Q. I don't know if we touched on this before, but</p> <p>3 to your knowledge was John Strange consulted on the</p> <p>4 Memorial light permit issue you see on Exhibit 2?</p> <p>5 MS. ZYLSTRA: I'm going to object. If you</p> <p>6 give me the same stipulation, I'll allow him to answer</p> <p>7 these questions on waiver of the privilege and will be</p> <p>8 used in that manner I'll let him answer that question,</p> <p>9 if he knows. I'll object on foundation. Go ahead.</p> <p>10 A. Not that I'm aware of.</p> <p>11 Q. In talking about the electrical permit that</p> <p>12 issued in 2015, you said you didn't know about the</p> <p>13 scoreboard but you did understand that there was</p> <p>14 basically -- that the field was going to be plumbed for</p> <p>15 future electrical; is that accurate?</p> <p>16 A. Correct.</p> <p>17 Q. And that future electrical was for the</p> <p>18 potential for lights in the future. Is that your</p> <p>19 understanding?</p> <p>20 A. I think and sound, the permit said.</p> <p>21 Q. So it was your understanding in 2015 that</p> <p>22 Edgewood was making future preparations for lights and</p> <p>23 for possible sound; is that right?</p> <p>24 MS. ZYLSTRA: Object to form. You can answer.</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 143</p> <p>1 Q. You made a reference in talking about the</p> <p>2 complaints received regarding Edgewood's use of the</p> <p>3 games or use of its field for games, you talked about</p> <p>4 the people that were weighing in all the time.</p> <p>5 Do you have a sense as to the number of</p> <p>6 complaints you received regarding Edgewood's use of its</p> <p>7 field for games in 2019?</p> <p>8 A. No.</p> <p>9 Q. Do you have a general sense as to who it was</p> <p>10 that were making those complaints?</p> <p>11 A. Generally, from my knowledge, it was people --</p> <p>12 I would refer to it as -- in the neighborhood.</p> <p>13 Q. Do you have knowledge of complaints from an</p> <p>14 organization called "No New Stadium"?</p> <p>15 A. Complaints from that organization? I'm not</p> <p>16 aware of that. I've heard of it, but I'm generally --</p> <p>17 I'm going to say when we received a complaint it had a</p> <p>18 name associated with it.</p> <p>19 Q. Individual person and not as a representative</p> <p>20 of some sort of organization; is that right?</p> <p>21 A. Personally, not that I remember.</p> <p>22 Q. Sure. Any complaints from representatives of</p> <p>23 any of the neighborhood associations that you're aware</p> <p>24 of speaking -- purporting to speak on behalf of the</p> <p>25 association?</p>	<p style="text-align: right;">Page 145</p> <p>1 Q. Were you aware of what their timeframe was as</p> <p>2 to whether they -- when they were hoping or planning to</p> <p>3 put in lights and sound?</p> <p>4 A. No.</p> <p>5 Q. Edgewood had the potential, did they not -- or</p> <p>6 Edgewood had the right, wouldn't they, to install lights</p> <p>7 on their field for the future use when they were no</p> <p>8 longer governed by a master plan; isn't that right?</p> <p>9 MS. ZYLSTRA: Objection. Form, foundation,</p> <p>10 incomplete hypothetical. You can respond.</p> <p>11 A. Master plan is gone. Campus-Institutional</p> <p>12 zoning, to be honest with you, do I know would that</p> <p>13 prohibit that? I can't speak intelligently to that.</p> <p>14 Q. But they weren't prohibited from pulling an</p> <p>15 electrical permit for the future installation of lights</p> <p>16 in 2015; correct?</p> <p>17 A. That's correct.</p> <p>18 Q. So they are allowed to pull permits and invest</p> <p>19 in their field for future use, too; correct?</p> <p>20 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>21 You can respond.</p> <p>22 A. Sure. They may be working with several alders</p> <p>23 to get an -- excuse me -- an amendment to the ordinance</p> <p>24 that would allow it.</p> <p>25 Q. Or they could get lights and then seek to</p>

<p style="text-align: right;">Page 146</p> <p>1 repeal their master plan, too, couldn't they?</p> <p>2 MS. ZYLSTRA: Same objection.</p> <p>3 A. Again, I'll go back to where we would -- I</p> <p>4 would be very concerned that we're allowing somebody to</p> <p>5 go down a road where, if it doesn't change and they've</p> <p>6 invested a significant sum of money and then the</p> <p>7 response is you allowed us to do this knowing that it</p> <p>8 wasn't legal at the time and now we can't do -- we have</p> <p>9 invested all this money and now we're out this money,</p> <p>10 why did you allow us to do that.</p> <p>11 Q. My question then applies to 2015, though.</p> <p>12 Did you provide any kind of caution -- did</p> <p>13 your department provide any kind of cautionary warning</p> <p>14 to Edgewood in 2015 and say, hey, we know you're</p> <p>15 plumbing your field for future lights and just so you</p> <p>16 know, you won't actually be allowed to get lights</p> <p>17 because you're not allowed to play games?</p> <p>18 MS. ZYLSTRA: Same objection.</p> <p>19 A. Sure. The cost to install conduit underground</p> <p>20 is minuscule compared to pulling the wire and then</p> <p>21 installing the towers and putting lights on top of it.</p> <p>22 Q. So the amount of investment in infrastructure,</p> <p>23 in your mind, in 2015, was different than in 2019 such</p> <p>24 that Edgewood didn't need to be warned about potentially</p> <p>25 unmet expectations; is that right?</p>	<p style="text-align: right;">Page 148</p> <p>1 the extent it calls for legal conclusion, but you can</p> <p>2 answer.</p> <p>3 A. I would be taking a shot in the dark, so I'm</p> <p>4 reluctant to do it. I know some ZBA stuff, you know.</p> <p>5 They -- like somebody is applying for a variance, they</p> <p>6 have to, I think, list grounds why they're doing it.</p> <p>7 If it's appealing the interpretation of the</p> <p>8 zoning administrator, to be honest with you, I don't</p> <p>9 need -- I don't know if they need grounds.</p> <p>10 Good question for Matt on Friday. They may</p> <p>11 just have the ability to say "we disagree."</p> <p>12 Q. Sure. With respect to the notices issued here</p> <p>13 on 9 and 11, these officials notices, do you know what</p> <p>14 discretion, if any, the ZBA has to overturn those, to</p> <p>15 reverse those?</p> <p>16 A. Well, I believe they have complete discretion</p> <p>17 and then the City could decide whether or not they want</p> <p>18 to appeal the decision of the ZBA.</p> <p>19 Q. To your knowledge, has your department ever</p> <p>20 issued any citations or official notices to the</p> <p>21 University of Wisconsin for using property for use not</p> <p>22 specified in their master plan?</p> <p>23 A. Not that I'm aware of.</p> <p>24 Q. Have you ever, yourself, reviewed the</p> <p>25 University of Wisconsin-Madison master plan?</p>
<p style="text-align: right;">Page 147</p> <p>1 MS. ZYLSTRA: Objection to form. Go ahead.</p> <p>2 A. I'm not sure if somebody pointed out that, at</p> <p>3 the time, when they gave them the permit, saying, you</p> <p>4 know, this is only for putting under ground, you can't</p> <p>5 legally do this. I'm not sure if that happened back</p> <p>6 then.</p> <p>7 Q. You're not sure. Do you have any reason to</p> <p>8 believe that that message was conveyed to Madison</p> <p>9 Edgewood High School in conjunction with that electrical</p> <p>10 permit in 2015?</p> <p>11 A. No.</p> <p>12 Q. Edgewood actually did appeal the official</p> <p>13 notices at -- I think it's 9 and 10; correct?</p> <p>14 A. I believe so, yes.</p> <p>15 Q. Did you have any involvement with the City's</p> <p>16 response to that appeal?</p> <p>17 A. No, I did not.</p> <p>18 Q. Who handled that matter for the City?</p> <p>19 A. Matt did.</p> <p>20 Q. Do you have any familiarity or knowledge about</p> <p>21 how the ZBA review process works?</p> <p>22 A. Yeah, but -- yes.</p> <p>23 Q. Sure. Do you have any idea what discretion,</p> <p>24 if any, ZBA has to reverse official notices?</p> <p>25 MS. ZYLSTRA: Object. Form, foundation, to</p>	<p style="text-align: right;">Page 149</p> <p>1 A. No.</p> <p>2 Q. Were you aware of any effort by anyone in your</p> <p>3 department to confirm that the university is using its</p> <p>4 open spaces for athletics and sports and recreation as</p> <p>5 the way they described it in the master plan?</p> <p>6 A. Not that I'm personally aware of, no.</p> <p>7 Q. Did you have any involvement in the process</p> <p>8 for the City's repeal or termination of Edgewood's</p> <p>9 master plan?</p> <p>10 A. None.</p> <p>11 Q. Who, if anyone, within your department would</p> <p>12 have been responsible for speaking for the City on that</p> <p>13 issue?</p> <p>14 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>15 A. Well, from building inspection it would have</p> <p>16 been Matt. I believe planning would be actively</p> <p>17 involved.</p> <p>18 Q. So in the time period of, just say, the fall</p> <p>19 of 2019, do you know who that would have been from</p> <p>20 planning?</p> <p>21 MS. ZYLSTRA: Same objection. You can answer.</p> <p>22 A. Well, Heather Stouder is the director, but it</p> <p>23 could have been any one of the people underneath her.</p> <p>24 Q. So you don't have actual knowledge of who</p> <p>25 would have been involved in that time?</p>

<p style="text-align: right;">Page 150</p> <p>1 A. Nope.</p> <p>2 Q. Okay.</p> <p>3 (Exhibit 12 marked)</p> <p>4 Q. MR. INGRISANO: Mr. Hank, have you seen this</p> <p>5 letter before?</p> <p>6 A. I believe I have, yes.</p> <p>7 Q. See the middle paragraph where it says,</p> <p>8 "Further enforcement of the zoning code, the ZBA</p> <p>9 decision, and the notices of violation now rests with</p> <p>10 the discretion of the city attorney. This is to inform</p> <p>11 that you I and my office will take no further</p> <p>12 enforcement steps unless and until we inform you of our</p> <p>13 decision to do so. We will give you any ample notice of</p> <p>14 any planned enforcement."</p> <p>15 Did I read that correctly?</p> <p>16 A. Uh-huh.</p> <p>17 Q. Is that yes?</p> <p>18 A. Sorry, yes.</p> <p>19 Q. Prior to this issuance of this letter were you</p> <p>20 consulted about the city attorney's decision to take no</p> <p>21 further enforcement steps?</p> <p>22 A. I believe that under this official notice with</p> <p>23 the multiple dates on it, that same basic statement was</p> <p>24 being said contingent on what happened with ZBA.</p> <p>25 Q. For the record, you just held up Exhibit 11;</p>	<p style="text-align: right;">Page 152</p> <p>1 sitting in a meeting with Matt, Mike May, and John</p> <p>2 Strange where this was discussed.</p> <p>3 Q. But you don't recall the contents of any of</p> <p>4 those discussions; is that right?</p> <p>5 A. Other than what is summarized in this letter.</p> <p>6 Anything other than that, no.</p> <p>7 Q. But what I'm hearing you say, then, is you</p> <p>8 recall meeting them with that office where they said,</p> <p>9 hey, guys, just so you know, we're not going to be</p> <p>10 enforcing these notices. So they previewed, right, this</p> <p>11 letter for you?</p> <p>12 A. Yes.</p> <p>13 Q. Did they say why they were not going to be</p> <p>14 enforcing those?</p> <p>15 MS. ZYLSTRA: Can I just have a standing on</p> <p>16 the stipulation?</p> <p>17 MR. INGRISANO: Those are dangerous. I would</p> <p>18 much rather just do one at a time. I want to respect</p> <p>19 your interest on that clarity so I'm not going to say</p> <p>20 no, but we need to make sure. Standing objections are</p> <p>21 really bad in my opinion.</p> <p>22 MS. ZYLSTRA: That's fine. Then I will just</p> <p>23 say "same stipulation, counsel."</p> <p>24 MR. INGRISANO: Yes.</p> <p>25 MS. ZYLSTRA: Go ahead.</p>
<p style="text-align: right;">Page 151</p> <p>1 correct?</p> <p>2 A. Yes. So now, the ZBA decision is over and the</p> <p>3 city attorney has said that they were not going to</p> <p>4 pursue penalties based on these official notices at this</p> <p>5 time.</p> <p>6 Q. Sure. And I understand what the letter is</p> <p>7 saying. The letter is saying that at this time they are</p> <p>8 not going to be basically prosecuting or further</p> <p>9 enforcing Exhibits 9 or 11.</p> <p>10 My question to you is, did Mr. May,</p> <p>11 Mr. Strange, or his office advise you in advance that,</p> <p>12 hey, we're not going to be enforcing the official</p> <p>13 notices that your building inspection department issued?</p> <p>14 A. I believe so.</p> <p>15 Q. What do you recall?</p> <p>16 MS. ZYLSTRA: Counsel, can we have the same</p> <p>17 stipulation as to this? Thank you. Go ahead.</p> <p>18 MR. INGRISANO: Same stipulation meaning that</p> <p>19 you're allowing him to answer this question does not</p> <p>20 waive privilege as to this question or create a subject</p> <p>21 matter waiver for larger issues?</p> <p>22 MS. ZYLSTRA: Correct. Thank you.</p> <p>23 MR. INGRISANO: Got it.</p> <p>24 MS. ZYLSTRA: Appreciate that.</p> <p>25 A. I believe -- again, I believe -- I remember</p>	<p style="text-align: right;">Page 153</p> <p>1 MR. INGRISANO: Thank you. Sorry.</p> <p>2 MS. ZYLSTRA: No worries.</p> <p>3 A. Well, if it's meeting -- again, if it's the</p> <p>4 meeting that I'm remembering, I believe it was Mike and</p> <p>5 John mainly leading the discussion, and Mike giving us</p> <p>6 his thoughts on it and on what we should and should not</p> <p>7 do, and the results was this letter.</p> <p>8 Q. Mr. Hank, I'm sorry, but my questions are</p> <p>9 actually going to what those thoughts were.</p> <p>10 I understand there is a meeting, I understand</p> <p>11 that they previewed it for you, that they gave their</p> <p>12 thoughts.</p> <p>13 I'm asking you what were there thoughts as to</p> <p>14 why they were not going to be issuing citations that</p> <p>15 Mr. Moskowitz spent a lot of time investigating and</p> <p>16 issuing.</p> <p>17 MS. ZYLSTRA: Object to form. You can answer.</p> <p>18 And the same stipulation, Counsel?</p> <p>19 MR. INGRISANO: Agreed.</p> <p>20 Q. Why Mr. Hank, that's the question. Why?</p> <p>21 MS. ZYLSTRA: Same stipulation?</p> <p>22 MR. INGRISANO: Same.</p> <p>23 MS. ZYLSTRA: Thank you. Same objection.</p> <p>24 A. Again, I'll just go back giving us their legal</p> <p>25 advice on what we thought we should be doing at this</p>

<p style="text-align: right;">Page 154</p> <p>1 time.</p> <p>2 Q. Which was what?</p> <p>3 MS. ZYLSTRA: Same?</p> <p>4 MR. INGRISANO: Same.</p> <p>5 MS. ZYLSTRA: Thank you.</p> <p>6 A. And I believe the question or the thought was</p> <p>7 that Edgewood had the right to appeal this to circuit</p> <p>8 court, I think circuit court, and that while we were</p> <p>9 going to hold in abeyance until it was resolved by the</p> <p>10 zoning board, that we should at least hold it in</p> <p>11 abeyance until their time had passed of where they could</p> <p>12 appeal to circuit, I believe.</p> <p>13 Q. So it was explained to you, then, that they</p> <p>14 were going to be taking no further enforcement steps</p> <p>15 unless and until proved otherwise solely because of the</p> <p>16 timeline for a pending appeal of the ZBA decision that's</p> <p>17 referenced as having occurred last night, July 11?</p> <p>18 MS. ZYLSTRA: Object to form. Same</p> <p>19 stipulation, Counsel?</p> <p>20 MR. INGRISANO: Yes.</p> <p>21 MS. ZYLSTRA: Go ahead.</p> <p>22 A. I believe so, yes.</p> <p>23 Q. Nothing else that you can recall from that</p> <p>24 meeting as to what their rationale was for not pursuing</p> <p>25 those notices?</p>	<p style="text-align: right;">Page 156</p> <p>1 A. Not that I'm aware of. And we'd be here if</p> <p>2 they did object. If they felt we were wrong, and I</p> <p>3 don't think we would be here right now.</p> <p>4 Q. That's a discussion for a different day, Mr.</p> <p>5 Hank.</p> <p>6 A. Yes, it is.</p> <p>7 Q. The letter goes on to paragraph 3, to the</p> <p>8 second sentence of that paragraph, "We invite Edgewood</p> <p>9 to file to terminate its master plan and return to the</p> <p>10 standard CI zoning, which would put it on equal footing</p> <p>11 with other high schools."</p> <p>12 Did I read that correctly?</p> <p>13 A. Yes.</p> <p>14 Q. Did Mr. May or Mr. Strange preview that for</p> <p>15 you in that meeting?</p> <p>16 MS. ZYLSTRA: Same stipulation, Counsel?</p> <p>17 MR. INGRISANO: Yes.</p> <p>18 MS. ZYLSTRA: And I'll object to form, but you</p> <p>19 can answer.</p> <p>20 A. I believe this was brought up during that</p> <p>21 meeting, yes.</p> <p>22 Q. Was it discussed in that meeting that the</p> <p>23 repeal of the master plan would provide a pathway for</p> <p>24 Edgewood to get its lights?</p> <p>25 MS. ZYLSTRA: Same stipulation?</p>
<p style="text-align: right;">Page 155</p> <p>1 MS. ZYLSTRA: Same stipulation, Counsel?</p> <p>2 MR. INGRISANO: Yes.</p> <p>3 MS. ZYLSTRA: Thank you.</p> <p>4 A. Not that I recall. Again, the fact that the</p> <p>5 major concern was that, at least in their eyes, it</p> <p>6 seemed a good possibility that they might appeal it to</p> <p>7 circuit court.</p> <p>8 Q. Was there any discussion that pursuing the</p> <p>9 these citations would be counterproductive or hurt the</p> <p>10 chances on appeal?</p> <p>11 MS. ZYLSTRA: Same stipulation, Counsel?</p> <p>12 MR. INGRISANO: Yes.</p> <p>13 MS. ZYLSTRA: I'll also object to form. You</p> <p>14 can answer.</p> <p>15 A. Hurt our chances? Not that I remember that</p> <p>16 being a topic.</p> <p>17 Q. During this meeting, Mr. Strange neither --</p> <p>18 I'm sorry.</p> <p>19 Did Mr. Strange or Mr. May express any opinion</p> <p>20 on the merits of either of the citations -- I'm sorry,</p> <p>21 the official notices themselves or of the interpretation</p> <p>22 of the master plan?</p> <p>23 MS. ZYLSTRA: Same stipulation?</p> <p>24 MR. INGRISANO: Yes.</p> <p>25 MS. ZYLSTRA: Object to form. You can answer.</p>	<p style="text-align: right;">Page 157</p> <p>1 MR. INGRISANO: Yes.</p> <p>2 MS. ZYLSTRA: And object to form, but you can</p> <p>3 answer.</p> <p>4 A. I would say yes.</p> <p>5 Q. Did anyone mention in this meeting that the</p> <p>6 repeal of the master plan would result in a pending</p> <p>7 light application being granted and issued?</p> <p>8 MS. ZYLSTRA: Object to form. Same</p> <p>9 stipulation, Counsel?</p> <p>10 MR. INGRISANO: Yes.</p> <p>11 MS. ZYLSTRA: You can answer.</p> <p>12 A. I don't remember that specifically being</p> <p>13 discussed.</p> <p>14 Q. To your knowledge, though, if the master plan</p> <p>15 were repealed, are you aware of any other impediments to</p> <p>16 the issuance of the Edgewood's February 2019 application</p> <p>17 for outdoor lights?</p> <p>18 MS. ZYLSTRA: Object to form, foundation. You</p> <p>19 can answer.</p> <p>20 A. Again, based on my limited knowledge of the</p> <p>21 standard CI zoning, no.</p> <p>22 Q. The mayor and Alder Evers -- is it pronounce</p> <p>23 Evers or Evers?</p> <p>24 MS. ZYLSTRA: Evers.</p> <p>25 MR. INGRISANO: I went through the first five</p>

<p style="text-align: right;">Page 158</p> <p>1 minutes of this case thinking he was Tony Evers' kid for 2 some reason. Don't tell him I said that. 3 Q. I see on this letter, Exhibit 12, that the 4 mayor and Alder Evers is copied; is that right? 5 A. Uh-huh. 6 Q. Have you heard whether either the mayor or 7 Mr. Evers had any sort of response or reaction to 8 Exhibit 12? 9 MS. ZYLSTRA: Same stipulation to the extent 10 it came -- 11 MR. INGRISANO: Yeah. To the extent it came 12 from an attorney, yes. 13 A. Not aware of any. 14 Q. Have you ever spoken with either the mayor or 15 Alder Evers about the Edgewood lights or the use of the 16 Edgewood field? 17 MS. ZYLSTRA: I'm going to object to the 18 extent that any discussions -- and I don't know that 19 there were any -- involved discussions with counsel. 20 Those will be privileged and I'll instruct you 21 not to answer. To the extent you had discussions with 22 them outside of that, you can answer the question. 23 I'm not sure if you had any discussion, so 24 I'll start there. 25 MR. INGRISANO: By counsel, you're referring</p>	<p style="text-align: right;">Page 160</p> <p>1 interpretation of the master plan or the merits of the 2 citations that were issued by your department? 3 A. No. 4 Q. I will represent to you that the 5 Campus-Institutional District zoning ordinance was 6 amended in October of 2019. 7 What involvement, if any, did you have with 8 that amendment or the amendment process? 9 A. I believe none. 10 Q. To your knowledge, did anyone in your 11 department have a role or involvement in that amendment 12 or the amendment process? 13 A. I would think certainly Matt did and maybe 14 Jenny. 15 Q. Who is Jenny? 16 A. Jenny Kirchgatter. 17 Q. What's her role within your department, at 18 least as of that time in 2019? 19 A. She's the assistant zoning administrator. 20 Generally, amendments to the zoning code are handled by 21 a joint group from planning and zoning, discussing them. 22 Matt certainly would have been involved. And if anybody 23 else, I would assume it would have been Jenny. 24 Q. Were you ever asked for any -- to review or 25 provide input on the amendment itself?</p>
<p style="text-align: right;">Page 159</p> <p>1 to trial counsel, you? 2 MS. ZYLSTRA: No, I think to the extent that 3 he's had discussions, if there was a meeting with 4 Attorney May and the mayor involving that he 5 participated in, I'm claiming privilege, at least until 6 I know what the answers are here. 7 A. The mayor, I would say definitely no. I don't 8 ever remember, at least with me, being in a meeting with 9 her where Edgewood came up. 10 With Alder Evers, if it was, it would have 11 been like in passing when we were talking about 12 something else. 13 But like talking specifics about Edgewood with 14 the alder, no. Matt was leading those things. If he 15 called in passing about something, I think he was 16 complaining about a place on the Beltline with lighting 17 issues and he may have just, like in passing, you know, 18 saying, you know, "Edgewood is still going on" or 19 something like that, you know. But talking specifics 20 with him, no. 21 Q. Not about the merits of -- 22 A. No. 23 Q. Not about -- hold on. 24 You don't have any recollection of 25 conversations with Alder Evers about the merits of the</p>	<p style="text-align: right;">Page 161</p> <p>1 A. Not that I recall. 2 Q. Did you ever review the amendment either 3 before or after its passage? 4 A. Not that I recall. 5 Q. Did anyone ever explain to you the impact or 6 changes created by that amendment? 7 MS. ZYLSTRA: I'll object to form on that. 8 A. Well, I believe one of the things that it did 9 was that it made some permitted uses become conditional 10 uses. 11 Q. So you didn't review the amendment. You 12 weren't involved with its process. 13 So I guess my question for you, sir, is, why 14 do you -- what's that belief based upon that it changed 15 some permitted uses to conditional uses? How did you 16 come to that understanding? 17 A. Because they ended up in front of the Plan 18 Commission. 19 Q. "They" being who? 20 A. Edgewood. 21 Q. So is that the Plan Commission level that you 22 developed an understanding that that was what the impact 23 of the amendment was? 24 A. I don't remember exactly when, but I remember 25 hearing that the amendment would -- would require --</p>

<p style="text-align: right;">Page 162</p> <p>1 would take things that were permitted uses and turn them 2 into conditional uses. When that was, I'm sorry, I just 3 don't remember. 4 Q. Okay. Did you ever talk to anyone about why 5 this amendment was being proposed? 6 A. Did I? No. 7 Q. So you don't know what motivated the 8 introduction of this amendment; is that fair? 9 A. That is fair. 10 Q. Were you involved, sir, with Edgewood's 11 application for a conditional use permit for its lights 12 in 2020? 13 A. No, I was not. 14 Q. Were you in any way consulted on the analysis 15 or issuance of a conditional use permit? 16 A. No. 17 Q. Were there any discussions with Mr. May, 18 Mr. Strange, Mr. Tucker, Mr. Parks, Mr. Evers, or 19 Ms. Stroud (sic) regarding your review and analysis of a 20 conditional use application? 21 MS. ZYLSTRA: Same stipulation, Counsel? 22 MR. INGRISANO: Yes. 23 MS. ZYLSTRA: I'll also object to form on the 24 question. You can answer. 25 Q. May, Strange, Tucker, Parks, Evers, Stroud?</p>	<p style="text-align: right;">Page 164</p> <p>1 MS. ZYLSTRA: Objection. Form, foundation. 2 You can answer. 3 A. Again, if it's for compliance with 10.085, 4 that's purely Steve Rewey and building. He's not 5 reviewing it for anybody else. He's only reviewing it 6 for the standards of 10.085. 7 And then when it complies, it gets signed off 8 in the site plan review as similar in Exhibit 3. 9 But again, his review has absolutely nothing 10 to do with Plan Commission, zoning, or whatever. It's 11 purely nuts and bolts; does it meet the lighting 12 standards in 10.085. 13 Q. Got it. Are you aware of any conditional use 14 permit applications for outdoor lighting during your 15 time as director up until your retirement other than 16 Edgewood's? 17 MS. ZYLSTRA: Object to form. You can answer. 18 A. If you're going to talk about under 19 Campus-Institutional after the fact became aware of 20 Memorial. But virtually any large development, the 21 exterior lighting goes through this process outlined in 22 Exhibit 3. 23 Q. 10.085? 24 A. Yes. 25 Q. Okay.</p>
<p style="text-align: right;">Page 163</p> <p>1 A. No. 2 Q. After the October 2019 amendment to the 3 Campus-Institutional zoning ordinance, do you know if 4 outdoor light applications in the Campus-Institutional 5 zone districts were still under your department's 6 purview? 7 MS. ZYLSTRA: Object to form. 8 A. Well, certainly, the review of 10.085, yes. 9 Was there something in the Campus-Institutional that 10 allowed the Plan Commission to weigh in on whether or 11 not to allow lights? No, I am not. I don't have that 12 knowledge. But the lighting standards, that was purely 13 my department. 14 Q. Sure. So, Mr. Rewey, is he under the -- is he 15 in the zoning administrator's department within the five 16 departments that you're in? 17 A. No, he is a new construction inspector who 18 also does plan review -- 19 (Reporter asks for clarification.) 20 He's a construction inspector. He does plan 21 review for lighting and also for building. 22 Q. Got it. So, to your knowledge, Edgewood's 23 application for lights in 2020 did not fall to someone 24 like Mr. Rewey but fell into a different department 25 within the City; is that correct?</p>	<p style="text-align: right;">Page 165</p> <p>1 A. So any of those large buildings that you see 2 on East Washington Avenue or any exterior parking lot 3 lighting is reviewed under 10.085. 4 Q. So outside of Campus-Institutional, regardless 5 of time, all other zoned districts have always -- their 6 outdoor lighting applications have always been reviewed 7 under 10.085; correct? 8 A. Yes. 9 MS. ZYLSTRA: Late objection. Form, 10 foundation. Go ahead. 11 A. Yes. 12 Q. Prior to the October 2019 amendment to the 13 Campus-Institutional District, outdoor lighting 14 applications for Campus-Institutional were also assessed 15 under 10.085; is that right? 16 MS. ZYLSTRA: Same objections. 17 A. I guess I want to be more direct. All outdoor 18 lighting in a commercial setting, which Edgewood also is 19 because of the nature of the thing, all outdoor 20 commercial lighting falls under 10.085 and would be 21 reviewed and approved by either Steve Rewey or somebody 22 else doing lighting analysis. 23 And then when they were done with the review, 24 they would approve it in the documents similar to 25 Exhibit 3.</p>

<p style="text-align: right;">Page 166</p> <p>1 Q. So after the October 2019 amendment to 2 Campus-Institutional, in addition to 10.085 analysis 3 that was going to be done, Campus-Institutional 4 districts without a master plan were now also subject to 5 a conditional use permit requirement for outdoor 6 lighting; is that correct? 7 MS. ZYLSTRA: Objection. Foundation. You can 8 answer. 9 A. You know, there might be other things besides 10 lighting. I believe the answer would be yes. Again, 11 not an expert on -- 12 Q. I'm sorry, you said the answer was what? 13 A. I believe the answer would be yes. But that 14 might -- I don't know if outdoor lighting is the only 15 thing that they made a conditional use. 16 Q. I didn't ask about any other thing; I asked 17 about outdoor lighting. 18 I'm not asking you to talk about the universe 19 of things that might not be subject to conditional use. 20 I'm asking you about outdoor lighting specifically. 21 A. I believe they -- the reason I'm hesitating, I 22 don't know what the ordinance says, so I'm a little bit 23 apprehensive to shoot from the hip and say, yes, it does 24 that, when maybe it does it but through some other way. 25 I just don't know.</p>	<p style="text-align: right;">Page 168</p> <p>1 Campus master plan, the establishment, improvement, or 2 modification of any primary or secondary use occurring 3 outside of an enclosed building shall require 4 conditional use approval." 5 Do you see that? 6 A. Yes. 7 Q. Do you have an understanding as to what impact 8 that provision has on outdoor lighting permits for 9 Campus-Institutional districts without a Campus Master 10 Plan? 11 MS. ZYLSTRA: Objection. Form, foundation. 12 You can answer. 13 A. Well, I could see how that would be -- how 14 that could be interpreted to mean that installing lights 15 might be -- might require conditional use. 16 Q. All right. Let's change gears here, Mr. Hank. 17 Do you need a break? 18 A. No. 19 Q. Sir, do you agree with me that Edgewood is a 20 religious institution? 21 A. Yes. 22 Q. A Catholic school? 23 A. Yes. 24 Q. When you were there at Edgewood you had a 25 religious education requirement, didn't you?</p>
<p style="text-align: right;">Page 167</p> <p>1 Q. Understood. 2 (Exhibit 13 marked) 3 Q. MR. INGRISANO: Mr. Hank, I'm handing you 4 what's been marked as Exhibit 13, which is a printout of 5 code section 28.097, Campus-Institutional District. Do 6 you see that? 7 A. Yes. 8 Q. Now, I'm going to ask you to take a look at 9 Section 2, which is "Master Plan Requirement" on the 10 first page. 11 A. Yep. 12 Q. And you see where it says down there after 13 Section 2, after it says "Amended by ORD-19-69. 14 10-10-19." Do you see that? 15 A. Uh-huh. 16 Q. Is that a yes? 17 A. Yes, it is. 18 Q. Have you had a chance to review this code 19 section since its amendment? 20 A. No. 21 Q. No? 22 A. No. 23 Q. Under (2)(d) on the first page. 24 A. Uh-huh. 25 Q. "In a Campus-Institutional District without a</p>	<p style="text-align: right;">Page 169</p> <p>1 A. Yes. 2 Q. The school would require attendance at school 3 liturgies; is that right? 4 MS. ZYLSTRA: Object to form, foundation. You 5 can answer. 6 Q. When you were there. 7 A. At school liturgies? We -- I want to say I 8 don't remember having them. 9 Q. Really? 10 A. Yep. 11 Q. Did you have any nuns or sisters on campus 12 that you recall? 13 A. There were a few, yes. 14 Q. And they taught classes? 15 A. Yes. 16 Q. Any priests on campus? 17 A. Yes. 18 Q. Did you ever go to the Edgewood website? 19 MS. ZYLSTRA: Object to form. You can answer. 20 A. Occasionally, when I would get an email from 21 like, say, Dennis McKinley mentioning the passing of 22 somebody or whatever, you know, click on links and stuff 23 like that, but generally no. 24 Q. Would you consider yourself to be an active 25 alumnus of Edgewood High School?</p>

<p style="text-align: right;">Page 170</p> <p>1 MS. ZYLSTRA: Object to form. You can answer.</p> <p>2 A. An active alumnus. My best lifelong friends</p> <p>3 are all Edgewood graduates. So how you interpret that,</p> <p>4 it was -- my time there I always held very special. I</p> <p>5 loved that institution.</p> <p>6 Now, like later in life, you know, my wife and</p> <p>7 I were not huge financial supporters of Edgewood. We</p> <p>8 are public servants. Don't make a lot of money compared</p> <p>9 to a lot of the people that graduate from there.</p> <p>10 But I'm going to say Edgewood always had a</p> <p>11 very dear spot in my heart for me.</p> <p>12 Q. Do you participate in any alumni events,</p> <p>13 attend reunions, things like that?</p> <p>14 A. Certainly reunions, class reunions. I</p> <p>15 actually get to go to about two of them every five years</p> <p>16 because my wife is two years older than me.</p> <p>17 Q. She's an alum, too?</p> <p>18 A. Yes, she is. '73.</p> <p>19 Q. My wife is class of '93.</p> <p>20 A. Hmm.</p> <p>21 Q. With what frequency do you think you drive by</p> <p>22 the school on Monroe Street?</p> <p>23 A. Not frequent at all.</p> <p>24 Q. Your activities of life don't cause you to</p> <p>25 come to that part of town very often?</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. Do you have any reason to question or doubt</p> <p>2 the sincerity of Edgewood's stated mission on this</p> <p>3 document, Exhibit 13 --</p> <p>4 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>5 Q. MR. INGRISANO: -- 14, sorry.</p> <p>6 MS. ZYLSTRA: I apologize, Counsel.</p> <p>7 Objection. Form, foundation. You can answer.</p> <p>8 A. No.</p> <p>9 Q. You mentioned that Edgewood, before, is a</p> <p>10 commercial entity and is therefore subject to the City's</p> <p>11 zoning and land use regulations; correct?</p> <p>12 A. It may be a bad choice of the words. I</p> <p>13 consider them -- they fall under the commercial building</p> <p>14 code.</p> <p>15 Q. But you would agree with me that Edgewood is</p> <p>16 subject to Madison's land use regulations; correct?</p> <p>17 A. Yes.</p> <p>18 MS. ZYLSTRA: Late objection to form.</p> <p>19 THE WITNESS: Sorry, I've got to keep waiting.</p> <p>20 Yes.</p> <p>21 MS. ZYLSTRA: That's okay.</p> <p>22 Q. They are not exempt in any way from review by</p> <p>23 your department, review by the zoning administrator?</p> <p>24 MS. ZYLSTRA: Object to form, foundation. You</p> <p>25 can answer.</p>
<p style="text-align: right;">Page 171</p> <p>1 A. I live on the east side. The vast majority of</p> <p>2 the time I spend on the east side of Madison. I've a</p> <p>3 very good friend who lives by Odana that when I go and</p> <p>4 visit him or spend time with him usually it's going up</p> <p>5 on Monroe Street, but that's really not that often.</p> <p>6 Q. Understood.</p> <p>7 A. Did I say Nakoma?</p> <p>8 Q. When?</p> <p>9 A. Did I say the Nakoma Golf? He lives by the</p> <p>10 Odana golf course.</p> <p>11 Q. Okay.</p> <p>12 A. Sorry, I just thought I misspoke.</p> <p>13 (Exhibit 14 marked)</p> <p>14 Q. MR. INGRISANO: Mr. Hank, I'm handing you</p> <p>15 what's been marked as Exhibit 14. It's a printout of</p> <p>16 part of Edgewood's website and mission and sponsors.</p> <p>17 You see page 2 has a mission statement and a</p> <p>18 sponsorship statement. Do you see that?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Is that a yes?</p> <p>21 A. Yes.</p> <p>22 Q. Thank you. Let me ask you to review that</p> <p>23 mission and that sponsorship and let me know when you're</p> <p>24 done.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 173</p> <p>1 A. No, they are not.</p> <p>2 Q. Do you agree with me, sir, that the City's</p> <p>3 decision to withhold the lighting permit had the effect</p> <p>4 of restricting or limiting Edgewood's use of its</p> <p>5 property?</p> <p>6 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>7 You can answer.</p> <p>8 A. So the wheels are spinning. I'll answer</p> <p>9 it this way: Under the assumption that</p> <p>10 Campus-Institutional zoning does not prohibit them</p> <p>11 playing games there, but does limit them from installing</p> <p>12 lights. With that in mind, it would limit when they can</p> <p>13 do that but not that they can do it. It's hard to play</p> <p>14 a football game in the dark.</p> <p>15 So again, I'm not sure exactly -- I'm not that</p> <p>16 familiar with the Campus-Institutional document anymore,</p> <p>17 so if it would not prohibit the playing of the games</p> <p>18 without the lights, I don't think you can play them at</p> <p>19 night, so that would restrict that or limit that.</p> <p>20 Q. The decision to withhold the permits, though,</p> <p>21 restricted Edgewood's ability to have practices at</p> <p>22 night, too; correct?</p> <p>23 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>24 You can respond.</p> <p>25 Q. Just like you can't play a football game in</p>

<p style="text-align: right;">Page 174</p> <p>1 the dark, you can't practice football in the dark, 2 right?</p> <p>3 MS. ZYLSTRA: Same objection.</p> <p>4 A. I would say yes, that is true.</p> <p>5 Q. And, in fact, the decision to withhold the 6 light permit resulted in the fact that any permitted use 7 of the field that could be done during the daylight 8 hours was not available to Edgewood and restricted their 9 ability to have that same use at nighttime; isn't that 10 correct?</p> <p>11 MS. ZYLSTRA: Objection. Form, foundation. 12 You can respond.</p> <p>13 A. Yes, but similar to East and West that have 14 practice fields that aren't lit, so they would not be 15 able to practice at night.</p> <p>16 Q. Do you agree with me, sir, the City's 17 interpretation of the master plan to prohibit athletic 18 contests and to restrict use of the field for team 19 practices and Phys Ed classes, that that restricted 20 Edgewood's use of its property?</p> <p>21 MS. ZYLSTRA: Objection. Form, foundation. 22 You can answer.</p> <p>23 A. Yes, but Edgewood also participated in the 24 drafting of that document, so they were, I'm going to 25 say, in agreement with it.</p>	<p style="text-align: right;">Page 176</p> <p>1 using that field for something like Edgefest during the 2 duration of the master plan. Is what that you're 3 saying?</p> <p>4 MS. ZYLSTRA: Same objections.</p> <p>5 A. I believe that's what the master plan says.</p> <p>6 Q. I'm asking you what Edgewood -- what you know 7 what Edgewood's intention was in the drafting of the 8 master plan.</p> <p>9 Did Edgewood intend in 2014 to limit that 10 field to only be used, by calling it an athletic field, 11 to only use it for team practices and Phys Ed classes?</p> <p>12 MS. ZYLSTRA: Objection. Form, foundation. 13 You can answer.</p> <p>14 A. I can't speak to Edgewood's intentions.</p> <p>15 Q. One line in a 220-page master plan, you think 16 that shows Edgewood's intent to restrict their football 17 field to be used for practices and Phys Ed classes; is 18 that fair?</p> <p>19 MS. ZYLSTRA: Objection. Form, argumentative, 20 foundation, asked and answered. You can answer it 21 again.</p> <p>22 A. I can only assume that it was omitted because 23 it would have been -- if they said they had planned to 24 play games there, they have athletic competitions there, 25 especially night games, I don't -- it would have made it</p>
<p style="text-align: right;">Page 175</p> <p>1 Q. So you're saying that Edgewood agreed to limit 2 its field to be used for team practices and Phys Ed 3 classes?</p> <p>4 A. I believe that's what the master plan says, 5 yes.</p> <p>6 Q. But as I've asked you before, you're not aware 7 of any actual statements by Edgewood saying, yeah, 8 that's what we agreed to do?</p> <p>9 MS. ZYLSTRA: Objection. Asked and answered. 10 You can answer.</p> <p>11 A. Not that I'm aware of.</p> <p>12 Q. So they had used this field for Edgefest for 13 all these years and now with the master plan they made 14 an intentional decision -- are you saying they made an 15 intentional decision to prohibit their uses for things 16 like Edgefest?</p> <p>17 MS. ZYLSTRA: Objection. Form, foundation. 18 You can respond.</p> <p>19 A. I am not -- I'm not sure when the original 20 master plan was -- was drafted and approved. I'm not 21 even sure they were doing Edgefest at that point.</p> <p>22 Q. That's not my question. They had historical 23 precedent for using that field for Edgefest, and what 24 you're saying is with the master plan, the way they 25 drafted it, they intentionally decided to foreclose</p>	<p style="text-align: right;">Page 177</p> <p>1 a lot more difficult to get their master plan approved.</p> <p>2 Q. So you believe that if they had omitted the 3 line about the field being used for team practice and 4 Phys Ed classes, they had omitted that line, it just 5 said "athletic field," that that would have impacted 6 their ability to get that master plan approved?</p> <p>7 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>8 A. It probably would have created a lot more 9 scrutiny from the neighbors that were involved in 10 helping, you know, navigate the master plan process.</p> <p>11 Q. Do you have any knowledge, though, it would 12 have actually changed how that master plan was reviewed?</p> <p>13 MS. ZYLSTRA: Objection. Form, foundation. 14 You can respond.</p> <p>15 A. No, I have no knowledge of that.</p> <p>16 Q. How many master plans have been submitted by 17 Campus-Institutional District since 2013?</p> <p>18 MS. ZYLSTRA: Objection. Form.</p> <p>19 A. I think two.</p> <p>20 Q. And who?</p> <p>21 A. Edgewood, and I think the university.</p> <p>22 Q. And Edgewood's was the first; correct?</p> <p>23 A. That, I don't know.</p> <p>24 Q. You don't know if Edgewood's came before the 25 university's?</p>


<p style="text-align: right;">Page 178</p> <p>1 A. No.</p> <p>2 Q. You agreed with me earlier today that part of</p> <p>3 your job is to enforce and interpret Madison's codes and</p> <p>4 ordinances; correct?</p> <p>5 A. That's correct.</p> <p>6 Q. Are you aware of any rules or presumptions</p> <p>7 that you're supposed to use in guiding your interpretive</p> <p>8 power?</p> <p>9 MS. ZYLSTRA: Object to form. You can answer.</p> <p>10 A. Well, I'd like to say I use good judgment in</p> <p>11 my -- in my day.</p> <p>12 Q. Sure. I think you also used the phrase</p> <p>13 "beneath your notice" too, right?</p> <p>14 A. Yes.</p> <p>15 Q. And that's part of it, that's part of what you</p> <p>16 bring to the table when you're interpreting zoning</p> <p>17 ordinances?</p> <p>18 MS. ZYLSTRA: Object to form. You can</p> <p>19 respond.</p> <p>20 A. In everything that we do enforcement, some</p> <p>21 things, you know, go back to shoveling the sidewalk. If</p> <p>22 you read the ordinance, it says you've got to clear edge</p> <p>23 to edge the entire length. We do have a point where if</p> <p>24 you do a certain percentage the rest of it is going to</p> <p>25 be beneath our notice.</p>	<p style="text-align: right;">Page 180</p> <p>1 Any of the city softball diamonds.</p> <p>2 Q. Keep going, if you can.</p> <p>3 A. Those are the only ones that come to mind.</p> <p>4 Q. Are there any parks in Madison that have --</p> <p>5 any city parks that offer nighttime ice skating in the</p> <p>6 winter, to your knowledge?</p> <p>7 A. I believe so, but I'm not sure if they still</p> <p>8 have competitions. Maybe hockey. I know Olbrich used</p> <p>9 to have hockey boards. The field by Sayle Street. They</p> <p>10 used to have hockey boards up there with lighting. To</p> <p>11 be honest, I'm not sure if those are still there. So I</p> <p>12 don't know.</p> <p>13 Q. Got it. How about Nielsen Tennis Stadium on</p> <p>14 the UW campus?</p> <p>15 A. I'm going to say I'm totally unaware of that</p> <p>16 facility. I know the indoor facility, but I really know</p> <p>17 absolutely nothing about the outdoor tennis facility.</p> <p>18 Q. How about the Goodman Softball Complex at UW?</p> <p>19 A. I know it exists. I've never been there for a</p> <p>20 game.</p> <p>21 Q. Do you know it to have lights for night games?</p> <p>22 MS. ZYLSTRA: Object. Foundation. You can</p> <p>23 answer.</p> <p>24 A. I cannot say that I have personal knowledge if</p> <p>25 they do or they don't.</p>
<p style="text-align: right;">Page 179</p> <p>1 Q. Is there any other athletic fields in Madison</p> <p>2 with outdoor lighting that hosts athletic contests at</p> <p>3 night?</p> <p>4 MS. ZYLSTRA: Objection. Foundation.</p> <p>5 A. Any athletic fields with lighting that host</p> <p>6 contests at night?</p> <p>7 Q. Yes.</p> <p>8 A. Okay. I'm going to shoot maybe myself in the</p> <p>9 foot. I'm not aware of any that don't have -- if they</p> <p>10 have lighting, I'm not aware of ones that don't have</p> <p>11 contests at night.</p> <p>12 Q. Interesting take on my question. I'll run</p> <p>13 with it.</p> <p>14 So, to your knowledge, all fields that have</p> <p>15 outdoor lighting use that outdoor lighting for night</p> <p>16 games; is that correct?</p> <p>17 MS. ZYLSTRA: Objection. Foundation. You can</p> <p>18 answer.</p> <p>19 A. I'm not aware of ones that don't, let's put it</p> <p>20 that way. There may be, but I'm not aware of ones that</p> <p>21 don't.</p> <p>22 Q. Name some fields for me in Madison, Wisconsin</p> <p>23 where I can go and watch an athletic contest at night</p> <p>24 under lights?</p> <p>25 A. Breese Stevens, Mansfield, Lussier Stadium.</p>	<p style="text-align: right;">Page 181</p> <p>1 Q. Got it.</p> <p>2 MS. ZYLSTRA: Counsel, can we take a short</p> <p>3 break?</p> <p>4 MR. INGRISANO: Absolutely.</p> <p>5 (Recess)</p> <p>6 BY MR. INGRISANO:</p> <p>7 Q. Mr. Hank, I'm going to ask you to get Exhibit</p> <p>8 4 back in front of you, please.</p> <p>9 A. Yes.</p> <p>10 Q. I'm looking at exhibit -- I'm sorry, looking</p> <p>11 at Interrogatory No. 1.</p> <p>12 It asks about email addresses used by the</p> <p>13 defendants, including personal email addresses from</p> <p>14 which you would have sent or received emails related to</p> <p>15 or referencing Edgewood's use of its athletic field.</p> <p>16 And in the response, the only email that looks</p> <p>17 related to you is GHank@cityofmadison.com. Do you see</p> <p>18 that?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Is that yes?</p> <p>21 A. That is correct.</p> <p>22 Q. Are you aware of any other email addresses</p> <p>23 that you would have used during this period of time of</p> <p>24 this dispute -- let's just say from 2013 through your</p> <p>25 retirement of 2021 -- that's any different, or</p>

<p style="text-align: right;">Page 182</p> <p>1 additional emails that you would have used?</p> <p>2 A. That would have ever mentioned Edgewood?</p> <p>3 Q. That would have been related to, let's just</p> <p>4 say, the use of Edgewood's athletic field.</p> <p>5 A. None. Whenever a friend used my work email</p> <p>6 address, they got admonished and I said to never use it</p> <p>7 again and here's my personal. Never.</p> <p>8 Q. So you used personal email for personal work</p> <p>9 and work email for work; is that right?</p> <p>10 A. That is correct.</p> <p>11 Q. Interrogatory No. 4, sir.</p> <p>12 A. Yep.</p> <p>13 Q. Are you aware of any -- in your experience and</p> <p>14 given your history with the department, are you aware of</p> <p>15 any outdoor lighting permits that were denied to Madison</p> <p>16 area schools from 2013 to the present?</p> <p>17 MS. ZYLSTRA: Objection. Foundation. I'm</p> <p>18 sorry, you said "are you aware." Strike that.</p> <p>19 MR. INGRISANO: Thank you.</p> <p>20 A. I'm not aware of any.</p> <p>21 Q. So to your knowledge, the denial of Edgewood's</p> <p>22 -- or sorry, the withholding of Edgewood's permits is</p> <p>23 the only example that you're aware of; is that fair?</p> <p>24 MS. ZYLSTRA: Objection. Form. You can</p> <p>25 answer.</p>	<p style="text-align: right;">Page 184</p> <p>1 A. I'm trying to think. There is the park off of</p> <p>2 McKenna Boulevard that has a bunch of softball diamonds</p> <p>3 associated with it, Elver Park. Bowman field. I'm</p> <p>4 drawing a blank on any on the southeast side that I can</p> <p>5 think of.</p> <p>6 Q. Okay. Interrogatory No. 9, "Identify all</p> <p>7 permitted uses of Edgewood's athletic field during the</p> <p>8 effective dates of Edgewood's master plan."</p> <p>9 Is it fair from your prior testimony to say</p> <p>10 the answer to that would be team practices and physical</p> <p>11 education classes?</p> <p>12 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>13 You can answer.</p> <p>14 A. Yes, what you just said.</p> <p>15 Q. Thank you.</p> <p>16 (Exhibit 15 marked)</p> <p>17 Q. MR. INGRISANO: Mr. Hank, I'm handing you</p> <p>18 what's been marked as Exhibit 15. I'll represent to you</p> <p>19 that this is -- these are excerpts from Edgewood</p> <p>20 yearbooks from the years 1973, '74, '75.</p> <p>21 I'm going to ask you if you can find yourself</p> <p>22 in any of these pictures.</p> <p>23 A. I'm struggling on the first one. I found</p> <p>24 myself on the second page. Come on. That might be</p> <p>25 there behind, but okay, go ahead, go ahead.</p>
<p style="text-align: right;">Page 183</p> <p>1 A. That's correct.</p> <p>2 Q. Interrogatory No. 5, are you aware of any</p> <p>3 athletic fields in the city of Madison associated with</p> <p>4 any public or private schools that are not permitted to</p> <p>5 host athletic contests?</p> <p>6 MS. ZYLSTRA: Object to form.</p> <p>7 Q. I paraphrased No. 5 a little bit, but just.</p> <p>8 A. None that I'm aware of.</p> <p>9 Q. So I already asked you about other lighted</p> <p>10 fields around the city of Madison.</p> <p>11 Interrogatory No. 8 on page 7, "Identify all</p> <p>12 city-owned parks and recreational areas that incorporate</p> <p>13 outdoor lighting sufficient to permit nighttime athletic</p> <p>14 events and activities, including football, baseball,</p> <p>15 hockey, basketball, softball, ice skating, roller</p> <p>16 skating or blading, skateboarding, pickleball, frisbee</p> <p>17 golf, soccer, lacrosse, and track and field."</p> <p>18 So are there any additional -- beyond what you</p> <p>19 may have already identified in your prior answer, are</p> <p>20 there any city-owned parks and recreational areas that</p> <p>21 fit that bill?</p> <p>22 MS. ZYLSTRA: Objection. Form.</p> <p>23 A. One that comes to mind that I didn't mention</p> <p>24 earlier was Burr Jones field.</p> <p>25 Q. Any others?</p>	<p style="text-align: right;">Page 185</p> <p>1 Q. Take a red pen, sir, on the exhibit. Can you</p> <p>2 circle yourself on any of the pictures where you think</p> <p>3 you are?</p> <p>4 A. Oh, dear god. Okay. I'm really struggling on</p> <p>5 the first one. The second one -- I know that's me</p> <p>6 there.</p> <p>7 Q. You're the center?</p> <p>8 A. I'm the center. So to be honest, two of them</p> <p>9 I could not.</p> <p>10 Q. Okay. Well, it's an old picture.</p> <p>11 A. And they are not color.</p> <p>12 Q. Not great copies.</p> <p>13 A. Yeah.</p> <p>14 (Exhibit 16 marked)</p> <p>15 Q. MR. INGRISANO: I'll hand you what's been</p> <p>16 marked as Exhibit 16. This is Defendants' Response to</p> <p>17 Plaintiff Edgewood High School of the Sacred Heart,</p> <p>18 Inc.'s Requests for Admissions.</p> <p>19 Have you ever seen this document before?</p> <p>20 A. I believe I might have seen this.</p> <p>21 Q. Did you review this document before it was</p> <p>22 sent out on December 9 of 2021 to review the accuracy of</p> <p>23 the answers to these requests for admission?</p> <p>24 A. December 20 of 2021?</p> <p>25 Q. December 9 of 2021. If you look at page 51 of</p>

<p style="text-align: right;">Page 186</p> <p>1 this document, after Request No. 168, I know there are a 2 lot of requests, but signed by your attorneys and sent 3 out that date -- served on that date. 4 I'm asking you whether you reviewed the 5 accuracy of any of the responses to these requests to 6 admit prior to that. 7 A. To be honest, I don't remember reviewing it. 8 Q. Request No. 168, look at that if you could. 9 A. 168. 10 Q. You were asked to admit that the City -- this 11 is on page 51. 12 You were asked to admit that the City did not 13 issue a written notice of denial for Edgewood's February 14 2019 lighting application for Edgewood's September 2019 15 lighting application. 16 And then after some objections, the answer is, 17 "Subject to and without waiving these objections, the 18 City Defendants deny." 19 Do you see that? 20 A. Yeah, I see it. 21 Q. Okay. Are you aware of a written notice of 22 denial for Edgewood's February 2019 lighting 23 application? 24 A. I'm trying to remember the exhibits that I 25 have seen. I'm sorry, I don't think so.</p>	<p style="text-align: right;">Page 188</p> <p>1 you can answer it. 2 Can you answer that question, Mr. Hank, or 3 not? 4 A. I'm not -- okay. I'll answer it this way: 5 In regards to Obrich Park, I'm not aware of a 6 high school using that at all. Warner Park. 7 The only one I think somebody is using is 8 Bowman field. I have no knowledge that they have leased 9 Warner Park or Bowman field. 10 Q. Sure. But you do recognize that Duane F. 11 Bowman Park is leased to high schools for athletic 12 events? 13 A. No, I'm -- no, actually, I am not aware of 14 that. 15 Q. But you didn't say "I'm not aware" or "I don't 16 have any information"; you said that you deny this. 17 MS. ZYLSTRA: Objection. I'm going to 18 instruct you not to answer. These are my answers that I 19 signed on behalf of the City. You're asking him about 20 language that's being used on this document. That, I 21 think, is my work product. 22 MR. INGRISANO: And we have raised this issue 23 before. We have consolidated answers from all these 24 defendants. We don't know who is answering what and 25 what the factual basis --</p>
<p style="text-align: right;">Page 187</p> <p>1 Q. Have you seen a written notice of denial 2 issued by the City for Edgewood's September 2019 3 lighting application? 4 A. Not that I remember. 5 Q. I'll ask you to take a look at page 48. 6 A. Yeah. 7 Q. Request No. 155, the middle of the page: 8 "Admit that Olbrich Park, Warner Park and Duane F. 9 Bowman Park are city parks adjacent to residentially 10 zoned neighborhoods leased to high schools for athletic 11 events without restriction on light or sound." 12 Did I read that correctly? 13 A. Yes. 14 Q. And the response there is "City Defendants 15 deny." 16 Do you see that? 17 A. Yes. 18 Q. Do you know why you denied that Request No. 19 155? 20 MS. ZYLSTRA: I'll object to the extent your 21 answer involves any communications with attorneys. It's 22 attorney-client privilege, and I instruct you not to 23 answer the question. 24 If you can provide an answer to that question 25 that does not involve any communications with attorneys,</p>	<p style="text-align: right;">Page 189</p> <p>1 MS. ZYLSTRA: I have -- 2 MR. INGRISANO: I'm sorry, I'm sorry, but 3 parties answer discovery; lawyers don't answer 4 discovery. And if he's denying something I have the 5 right to inquire some factual that he has for why that 6 was denied. 7 If you're going to -- if you want to say on 8 the record that you did not consult with your client 9 before issuing these and that you issued these on your 10 own without consulting Mr. Hanks about these responses, 11 go ahead and make that record. 12 But I have a right to understand that these 13 are truthful answers from this party. 14 MS. ZYLSTRA: Counsel, I am not preventing you 15 from asking him what he knows. What you are asking him 16 is why the decision was made that counsel put in this 17 objection in this language. 18 I think your question could be asked and be 19 properly worded. What your question asked him, I 20 believed invokes the attorney-client privilege. 21 Q. What factual information are you aware of that 22 warrants denying that response with respect to Bowman 23 Park? 24 MS. ZYLSTRA: I'll object to form, but you can 25 answer. And asked and answered to the extent he's</p>

<p style="text-align: right;">Page 190</p> <p>1 provided.</p> <p>2 A. I have no knowledge that any of these are</p> <p>3 leased to high schools for athletic events, period.</p> <p>4 I have no knowledge of that. It's not under my</p> <p>5 purview.</p> <p>6 Q. Understood. But you denied it. Your answer</p> <p>7 is a denial. It's not an "I don't have information</p> <p>8 about that."</p> <p>9 Are you aware of any facts that would say that</p> <p>10 that is -- are facts in that request to admit that</p> <p>11 should be denied?</p> <p>12 MS. ZYLSTRA: Object. Form, foundation,</p> <p>13 argumentative. You can answer.</p> <p>14 A. I did not provide information on this</p> <p>15 personally.</p> <p>16 Q. Page 8, Request No. 14.</p> <p>17 A. Yes.</p> <p>18 Q. "Admit that electrical permits were</p> <p>19 applied for and granted as part of the 2015 field</p> <p>20 renovation."</p> <p>21 You did not respond to that Request No. 14.</p> <p>22 I'm asking for a response today.</p> <p>23 MS. ZYLSTRA: And I'll object, Counsel,</p> <p>24 because, first of all, this is an objection, so that's</p> <p>25 based on attorney -- that's based on mine.</p>	<p style="text-align: right;">Page 192</p> <p>1 What facts are known to you, sir, that would</p> <p>2 cause you to deny this request?</p> <p>3 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>4 Rule of Completeness and not reading the entire answer.</p> <p>5 It calls for a legal conclusion.</p> <p>6 MR. INGRISANO: To the extent further answer</p> <p>7 is required, the City defendants deny. And so I'm going</p> <p>8 to explore what facts this witness has, if any, that</p> <p>9 would support his denial of this Request No. 3.</p> <p>10 Q. Mr. Hank?</p> <p>11 A. I'm going to say I'm not qualified to answer</p> <p>12 that question under RLUIPA. It is my personal belief</p> <p>13 that they are a religious institution, but is it under</p> <p>14 RLUIPA? I have no idea.</p> <p>15 Q. Page 9, sir. Request No. 17. "Admit that</p> <p>16 Edgewood's educational mission is in furtherance of the</p> <p>17 sincerely held religious beliefs of the Dominican</p> <p>18 Sisters of Sinsinawa and of Edgewood." After a --</p> <p>19 A. I'm sorry, I was catching up. I have a hand</p> <p>20 injury from a table saw so I move slowly.</p> <p>21 Q. Sure. No worries.</p> <p>22 A. 17?</p> <p>23 Q. 17. "Admit that Edgewood's educational</p> <p>24 mission is in furtherance of the sincerely held</p> <p>25 religious beliefs of the Dominican Sisters of Sinsinawa</p>
<p style="text-align: right;">Page 191</p> <p>1 I also believe that there was follow-up</p> <p>2 correspondence with regard to some of the requests to</p> <p>3 admit so a further answer was given on that.</p> <p>4 So I'll object on form and foundation. But</p> <p>5 Mr. Hank, you can answer that question.</p> <p>6 A. I believe the electrical permit was issued to</p> <p>7 install the conduit for future lighting and speak -- and</p> <p>8 PA system.</p> <p>9 Q. Page 7, sir, question No. 10. "Admit that</p> <p>10 lacrosse matches have been regular events on Edgewood's</p> <p>11 field since 2015."</p> <p>12 Do you admit or deny that response -- that</p> <p>13 request?</p> <p>14 MS. ZYLSTRA: Objection. Form, foundation,</p> <p>15 asked and answered.</p> <p>16 You can answer again, Mr. Hank.</p> <p>17 A. I have no personal knowledge that lacrosse</p> <p>18 matches have been played there, ever.</p> <p>19 Q. Sir, you previously testified that you believe</p> <p>20 Edgewood is a religious institution; correct?</p> <p>21 A. Yes.</p> <p>22 Q. I'll ask you to look at page 5, Request No. 3.</p> <p>23 "Admit that Edgewood is a religious</p> <p>24 institution under RLUIPA, 42 U.S.C. Section 2000cc, et</p> <p>25 seq." City Defendants deny that.</p>	<p style="text-align: right;">Page 193</p> <p>1 and of Edgewood."</p> <p>2 Did I read that correctly? Did I read Request</p> <p>3 No. 17 correctly?</p> <p>4 A. You did, and --</p> <p>5 Q. So, sir, my next question is, after an</p> <p>6 objection the response given is, "To the extent further</p> <p>7 answer is required, the City Defendants deny."</p> <p>8 My question for you, sir, is are you aware of</p> <p>9 any facts that caused you to deny that Edgewood's</p> <p>10 educational mission is in furtherance of its sincerely</p> <p>11 held religious beliefs of the Sinsinawan Dominicans or</p> <p>12 of Edgewood?</p> <p>13 MS. ZYLSTRA: Objection. Form, foundation,</p> <p>14 rule of completeness.</p> <p>15 A. I am not aware.</p> <p>16 Q. Sir, page 10, Request No. 20. "Admit that</p> <p>17 athletics is a primary way some Edgewood students</p> <p>18 correct with each other."</p> <p>19 Did I read that correctly?</p> <p>20 A. Yes.</p> <p>21 Q. You go on to say, "Subject to and without</p> <p>22 waiving these objections, the City Defendants object</p> <p>23 that the request is vague and therefore deny."</p> <p>24 Did I read that correctly?</p> <p>25 A. You're reading it correctly.</p>

<p style="text-align: right;">Page 194</p> <p>1 Q. Sir, in your experience as an Edgewood High 2 School alum and as a football player on that team, would 3 you agree that athletics is a primary way that some 4 Edgewood students connect with each other? 5 MS. ZYLSTRA: Object to form. You can answer. 6 A. It was for me at the time. 7 Q. Did others share -- to your knowledge, would 8 your lifelong friends that you've described from 9 Edgewood, would they share in that sentiment as well? 10 MS. ZYLSTRA: Objection. Form, foundation. 11 A. I would believe so, yes. 12 Q. In your experiences at Stevens Point and the 13 University of Wisconsin, would you also agree that 14 athletics is a primary way that students at the 15 university level can connect with each other? 16 MS. ZYLSTRA: Same objection. 17 A. Yes. 18 Q. Do your kids play high school athletics? 19 A. At the beginning. They never -- they were 20 never good athletics. 21 Q. We're in the same boat, Mr. Hank. 22 MR. INGRISANO: Reserving my rights to insist 23 upon individualized answers to these, I will go ahead 24 and have no further questions on that. I believe that's 25 about it. I'm done.</p>	<p style="text-align: right;">Page 196</p> <p>1 Q. So at the time that Edgewood put in its 2 February lighting application, the stated intention of 3 Edgewood was to hold night games; correct? 4 A. Based on the question and answers, yes. 5 MS. ZYLSTRA: No further questions. 6 FURTHER EXAMINATION 7 BY MR. INGRISANO: 8 Q. That question and answer was attached to the 9 February 27 letter, Exhibit 6; correct? 10 A. To my understanding, yes. 11 Q. And despite the content of that question and 12 answer, there is nothing in Exhibit 6 that is purporting 13 to deny Edgewood the issuance of that lighting permit; 14 is that correct? 15 MS. ZYLSTRA: Object to form, foundation. You 16 can answer. 17 A. No. 18 Q. And, in fact, Mr. Tucker confirms the City 19 believes this permit can be issued without requiring 20 amendment of the approved 2014 Master Plan; correct? 21 MS. ZYLSTRA: Object to form. 22 A. Yes. 23 Q. And so the last paragraph: "The purpose of 24 this letter is to inform you" -- meaning Mr. Elliot -- 25 "that the issuance of any lighting permit does not</p>
<p style="text-align: right;">Page 195</p> <p>1 MS. ZYLSTRA: I just have a couple follow-up 2 questions. 3 EXAMINATION 4 BY MS. ZYLSTRA: 5 Q. Mr. Hank, I would like to pull out Exhibit 6. 6 A. As long as it's not the yearbook. Okay. 7 Q. Long ago, earlier in the day, counsel had 8 asked you some questions about Edgewood's lighting 9 application in February of 2019 and asked you questions 10 about getting lights for purposes of practices. 11 Do you recall that line of questioning? 12 A. Yes. 13 Q. And I want you to take a look at Exhibit 6 and 14 turn to the question -- the first page of the question 15 and answer of the frequently asked questions. 16 And I want to direct your attention to the 17 last question on that page where it says, "Is Edgewood 18 High School planning to host night games at the Goodman 19 Athletic Complex if the permit for lighting is granted 20 by the City?" The answer is "Yes." 21 Do you see that, sir? 22 A. Yes, I do. 23 Q. And this is connected to a letter to the 24 Edgewood community, dated February 22nd, 2019; correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 197</p> <p>1 change the City's position on the use of the facility." 2 Correct? 3 MS. ZYLSTRA: I'll object to form. You can 4 answer. 5 A. Yes. 6 Q. It's a warning, right? 7 A. Yes. 8 Q. Just because we issue you lights doesn't mean 9 we're going to allow you to host games; correct? 10 MS. ZYLSTRA: Object to form, foundation. 11 A. That is correct. 12 MR. INGRISANO: That's all. Thank you. 13 MS. ZYLSTRA: Can we reserve the right to read 14 and sign, please. 15 (Deposition adjourned at 3:53 p.m.) 16 17 18 19 20 21 22 23 24 25</p>

<p style="text-align: right;">Page 198</p> <p style="text-align: center;">1 CERTIFICATE OF REPORTER</p> <p>2</p> <p>3 I, Cheri Winter, a Certified Shorthand</p> <p>4 Reporter, Notary Public in and for the State of</p> <p>5 Wisconsin, do hereby certify that the foregoing</p> <p>6 deposition was taken before me, on the 27th day of April</p> <p>7 2022; that it was taken at the request of the Plaintiff;</p> <p>8 that it was taken in shorthand by me, a competent court</p> <p>9 reporter and disinterested person, approved by all</p> <p>10 parties in interest, and thereafter converted to</p> <p>11 typewriting using computer-aided transcription; that</p> <p>12 said deposition is a true record of the deponent's</p> <p>13 testimony; that the deposition was taken pursuant to</p> <p>14 Notice, that said GEORGE HANK, before examination was</p> <p>15 sworn by me to testify to the truth, the whole truth,</p> <p>16 and nothing but the truth relative to said cause.</p> <p>17 Dated May 11, 2022.</p> <p>18</p> <p style="text-align: center;">19 </p> <p style="text-align: center;">20 Cheri Winter</p> <p style="text-align: center;">21 Notary Public</p> <p style="text-align: center;">22 State of Wisconsin</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 200</p> <p style="text-align: center;">1 DEPOSITION REVIEW</p> <p style="text-align: center;">2 CERTIFICATION OF WITNESS</p> <p>3</p> <p>4 ASSIGNMENT REFERENCE NO: 5188346</p> <p>5 CASE NAME: Edgewood High School Of The Sacred Heart Inc v.</p> <p>6 City Of Madison Wisconsin Et Al</p> <p>7 DATE OF DEPOSITION: 4/27/2022</p> <p>8 WITNESS' NAME: George Hank</p> <p>9 In accordance with the Rules of Civil</p> <p>10 Procedure, I have read the entire transcript of</p> <p>11 my testimony or it has been read to me.</p> <p>12 I have made no changes to the testimony</p> <p>13 as transcribed by the court reporter.</p> <p>14</p> <p>15 _____</p> <p>16 Date George Hank</p> <p>17 Sworn to and subscribed before me, a</p> <p>18 Notary Public in and for the State and County,</p> <p>19 the referenced witness did personally appear</p> <p>20 and acknowledge that:</p> <p>21</p> <p>22 They have read the transcript;</p> <p>23 They signed the foregoing Sworn</p> <p>24 Statement; and</p> <p>25 Their execution of this Statement is of</p> <p>their free act and deed.</p> <p>I have affixed my name and official seal</p> <p>this _____ day of _____, 20____.</p> <p>_____ Notary Public</p> <p>_____ Commission Expiration Date</p>
<p style="text-align: right;">Page 199</p> <p>1 Veritext Legal Solutions</p> <p>2 1100 Superior Ave</p> <p>3 Suite 1820</p> <p>4 Cleveland, Ohio 44114</p> <p>5 Phone: 216-523-1313</p> <p>6</p> <p>7 May 11th, 2022</p> <p>8 To: SARAH A. ZYLSTRA</p> <p>9</p> <p>10 Case Name: Edgewood High School Of The Sacred Heart Inc v. City Of</p> <p>11 Madison Wisconsin Et Al</p> <p>12 Veritext Reference Number: 5188346</p> <p>13 Witness: George Hank Deposition Date: 4/27/2022</p> <p>14</p> <p>15 Dear Sir/Madam:</p> <p>16</p> <p>17 Enclosed please find a deposition transcript. Please have the witness</p> <p>18 review the transcript and note any changes or corrections on the</p> <p>19 included errata sheet, indicating the page, line number, change, and</p> <p>20 the reason for the change. Have the witness' signature notarized and</p> <p>21 forward the completed page(s) back to us at the Production address</p> <p>22 shown</p> <p>23 above, or email to production-midwest@veritext.com.</p> <p>24</p> <p>25 If the errata is not returned within thirty days of your receipt of</p> <p>this letter, the reading and signing will be deemed waived.</p> <p>Sincerely,</p> <p>Production Department</p> <p>NO NOTARY REQUIRED IN CA</p>	<p style="text-align: right;">Page 201</p> <p style="text-align: center;">1 DEPOSITION REVIEW</p> <p style="text-align: center;">2 CERTIFICATION OF WITNESS</p> <p>3</p> <p>4 ASSIGNMENT REFERENCE NO: 5188346</p> <p>5 CASE NAME: Edgewood High School Of The Sacred Heart Inc v.</p> <p>6 City Of Madison Wisconsin Et Al</p> <p>7 DATE OF DEPOSITION: 4/27/2022</p> <p>8 WITNESS' NAME: George Hank</p> <p>9 In accordance with the Rules of Civil</p> <p>10 Procedure, I have read the entire transcript of</p> <p>11 my testimony or it has been read to me.</p> <p>12 I have listed my changes on the attached</p> <p>13 Errata Sheet, listing page and line numbers as</p> <p>14 well as the reason(s) for the change(s).</p> <p>15 I request that these changes be entered</p> <p>16 as part of the record of my testimony.</p> <p>17</p> <p>18 I have executed the Errata Sheet, as well</p> <p>19 as this Certificate, and request and authorize</p> <p>20 that both be appended to the transcript of my</p> <p>21 testimony and be incorporated therein.</p> <p>22</p> <p>23 _____</p> <p>24 Date George Hank</p> <p>25</p> <p>Sworn to and subscribed before me, a</p> <p>Notary Public in and for the State and County,</p> <p>the referenced witness did personally appear</p> <p>and acknowledge that:</p> <p>They have read the transcript;</p> <p>They have listed all of their corrections</p> <p>in the appended Errata Sheet;</p> <p>They signed the foregoing Sworn</p> <p>Statement; and</p> <p>Their execution of this Statement is of</p> <p>their free act and deed.</p> <p>I have affixed my name and official seal</p> <p>this _____ day of _____, 20____.</p> <p>_____ Notary Public</p> <p>_____ Commission Expiration Date</p>

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1 ERRATA SHEET
2 VERITEXT LEGAL SOLUTIONS MIDWEST
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19 _____
20 Date _____ George Hank
21 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
22 DAY OF _____, 20_____.
23 _____
24 Notary Public
25 _____
Commission Expiration Date

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Wisconsin Rules of Civil Procedure
Chapter 804, Depositions and Discovery
Section 804.05

(6) Submission to Deponent; Changes; Signing.

If requested by the deponent or any party, when the testimony is fully transcribed the deposition shall be submitted to the deponent for examination and shall be read to or by the deponent. Any changes in form or substance which the deponent desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the deponent for making them. The deposition shall then be signed by the deponent, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the deponent within 30 days after its submission to the deponent, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the deponent or the fact of the refusal or failure to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under s. 804.07 (3) (d) the court holds

that the reasons given for the refusal or failure to sign require rejection of the deposition in whole or in part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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